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Students'
Bengal Regulations Revenue Sales Act.

Third and Revised Edition

H. N. BANERJEE, M.A., B.L.

STUDENTS' BENGAL REGULATIONS AND REVENUE SALES ACT

WITH NOTES.

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THIRD AND REVISED EDITION.

BY

H. N. Banerjee, M.A., B.L.,

University Gold medelist and Prizeman, Ritchie Prizeman, Prasanna Kumar Tagore Law Scholar, Author, "Student's Companion Series."

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To most of the Bengal Zemindars unschooled in punctuality and business habits, this was nothing short of the crack of doom. They were too old to shake off at a short and sudden notice the lax and irregular habits which had grown upon them through several generations past. It was vain to expect the ancient Zemindars of Bengal, encumbered, as they were, with all the costly paraphernalia of their petty courts and military retainers and accustomed to leave the management of their estates in the hands of dishonest and irresponsible servants to suddenly transform themselves into punctual rent-collectors. The system of sale and attachment of the defaulter's estate for arrears of revenue introduced by the Permanent Settlement has in the course of a very few years reduced most of the great Zemindars in Bengal to distress and beggary and produced a greater change in the landed property of Bengal than has perhaps ever happened in the same space of time in any age or country by the mere effect of internal regulations. The ancient houses of Bengal broke down under the strain of the new rule and defaults followed on an extensive scale. In fact, few among the landed aristocracy could escape from the effects of the relentless law which made a clean sweep of the ancient Zemindari houses. To borrow an effective metaphor from Hunter, "the wave of the Permanent Settlement had in truth submerged the ancient houses of Bengal." In fact it is scarcely too much to say that within ten years that immediately followed the Permanent Settlement a complete revolution took place in the constitution and ownership of the estates which formed the subject of that settlement. (*Guha's Land Systems*).

Estates of disqualified proprietors not liable to sale for arrears of assessment accruing whilst they are deprived of the managemet of them.

(7) But nothing contained in this Proclamation shall be construed to render the lands of the several descriptions of disqualified proprietors, specified in the first article of the Regulations regarding disqualified landholders, passed on the 15th July, 1791, liable to sale for any arrears which have accrued, or may accrue, on the fixed jama that has been or may be assessed upon their lands under the above mentioned Regulations for the Decennial Settlement; *provided* that such arrears have accrued, or may accrue, during the time that they have been or may be dispossessed of the management of

their lands, under the said Regulations of the 15th July 1791. It is to be understood, however, that whenever all or any of the descriptions of disqualified landholders, specified in the first article of the last mentioned Regulations shall be permitted to assume or retain the management of their lands in consequence of the ground of their dispualification no longer existing or of the G. G. in Council dispensing with, altering, or abolishing those Regulations, the lands of such proprietors will be held responsible for the payment of the fixed jama, that has been or may be assessed thereon, from the time that the management may devolve upon them, in the same manner as the lands of all actual proprietors of land who are declared qualified for the management of their estates, and also of all actual proprietors who are unqualified for such management by natural or other disabilities but do not come within the descriptions of dispualified landholder specified in the first article of the Regulations of the 15th July 1791, are and will be held answerable for any arrears that are or may become due from them, on the fixed jama which they, or any persons on their behalf, have engaged, or may engage to pay, under the above mentioned Regulations for the Decennial Settlement. (S. 7)

State briefly the duties imposed on Zemindars by P. S. R.L. '04, 17(*a*)

Duties of Proprietors under the Permanent Settlement :—

(1) They are to discharge the revenue at the stipulated periods without delay or evasion.

(2) They are to conduct themselves with good faith and moderation towards their dependent talukdars and raiyats.

(3) They should exert themselves in the improvement of their estates.

Art. VII. Govt. to enact such Regulations as they may think necessary for welfare of the dependent talukdars and

7 (1) It being the duty of the ruling powe to protect all classes of people and more particulary those who from their situation are most helpless, the Governor-General in Council will, whenever he deem it proper, enact such Regulations as he may think necessary for the protection and welfare of the dependent talukdars, raiyats and other cultivators of the soil and no Zemindar, independent talukdar, or other actual proprietor of land shall be entitled on this account to

make any objections to the discharge of the fixed assessment which they have respectively agreed to pay.

cultivators; and proprietors not to withhold the revenue on that account.

(2) The Governor-General in Council having, on the 21st July, 1790, directed the *sayar* collections to be abolished, a full compensation was granted to the proprietors of land for the loss of revenue sustained by them in consequence of this abolition, and he now declares, that if he should hereafter think it proper to re-establish the *sayar* collections, or any other internal duties, and to appoint officers on the part of Government to collect them, no proprietor of land will be admitted to any participation thereof or be entitled to make any claims for remission of assessment on that account.

All internal duties that may hereafter be established belonging exclusively to Govt.

What reservations were made in the Permanent Settlement Regulation in favor of the Government? B. L., 1925(*a*)

Sayar means "remaining" "the remainder" and was applied by the Mahomedan Government to the remaining sources of revenue besides the land-tax, such as customs, transit-duties, licences, fees, house-tax, market-tax &c., &c. The imposition and collection of such internal duties had been from time immemorial, the exclusive privilege of Government not exerciseable by any subject without its expressed sanction. This sanction however had been too generally allowed to the Zemindars, who had imposed numerous and vexatious internal duties for their own advantage. In order to improve trade, which was injured if not destroyed by the multiplicity of these petty taxes and also to provide a means of augmenting the public revenue (should the exigencies of Government render such a course necessary) without increasing the land-tax, it was resolved to resume and abolish the *Sayar* and this was accomplished under the provisions of Reg. XXVII of 1793, all taxes and duties levied by private individuals or otherwise than under the direct authority of Government being abolished and prohibited for the future (Field).

Jama that may be assessed on alienated lands to belong exclu-

(3) The Governor-General in Council will impose such assessment as he may deem equitable, on all lands at present alienated and paying no public revenue, which have been or may be proved to be held under illegal or invalid titles. The assessment so imposed

sively to Govt.

will belong to Government and no proprietor of land will be entitled to any part of it.*

Police allowances in land or money received by proprietors whose jama is declared fixed resumable by Govt.

(4) The jama of the Zemindars, independent talukdars and other actual proprietors of land, which is declared fixed in the foregoing articles, is to be considered entirely unconnected with, and exclusive of, any allowances which have been made to them in the adjustment of the jama for keeping up *thanas* or police establishments and also of the produce of any lands which they may have been permitted to appropriate for the same purpose; and the Governor-General in Council reserves to himself the option of resuming the whole or part of such allowances, or produce of such lands, according as he may think proper, in consequence of his having exonerated the proprietors of land from the charge of keeping the peace, and appointed officers on the part of Government to superintend the police of the country. The Governor General in Council, however, declares that the allowances or produce of lands which may be resumed, will be appropriated to no other purpose but that of defraying the expense of the police: and that instructions will be sent to the collectors, not to add such allowances or the produce of such lands to the jama of the proprietors of land, but to collect the amount from them separately. (S. 8)

Allowances that may be so resumed not to be added to the jama but to be collected separately and applied solely to the police.

Write a short note on Ghatwali lands with reference to decisions of the Privy Council. B. L. 1924(*a*).

Explain the expression :— Ghatwali tenure. B. L. 1918(*b*). 21 (Suppl.) 22 (*a*), 23(*b*).

Ghatwali tenure—Ghatwali tenures are grants of land situated on the edge of the hilly country, and held on condition of guarding the *ghats* or passes. They were created by the Mahomedan Government in early times as a means of providing a police and military force to watch and guard the mountain passes from the invasions of the lawless tribes who inhabited the hill districts. Large grants of land were made in those days by the Government to persons of

*But see Sec. 6, Reg. XIX of 1793, according to which the revenue assessed on lands not exceeding one hundred *bighas* alienated before the 1st of December, 1790, is to belong to the landholder within whose estate or tenure the land is situate. "The revenue assessable on land not exceeding one hundred bighas of the measurement that may prevail in the pargana wherein it may be situated, and whether lying in one village or two or more villages and that may have been alienated by any one grant made previous to the 1st December, 1790 and which may be adjudged or become liable to the payment of revenue, shall belong to the person responsible for the discharge of the revenue of the estate or dependent taluq in which the land may be situated notwithstanding anything said in Sec. 8, Reg. 1 of 1793."

high rank at a low rent or at no rent at all, upon condition that they should provide and maintain a sufficient military force, to protect the inhabitants of the plains from those lawless incursions; and the grantees on their part sub-divided the lands to other tenants, each of whom besides paying generally a small rent, held their lands in consideration of these military services and provided, each according to the extent of his holding, a specified number of armed men to fulfil the requirements of the Government.

What are Ghatwali lands? State the principles laid down regarding the resumption of such lands in the case of Raja Lilanund Singh vs. Govt. of Bengal. B. L. 1920(*a*)

In Raja Lilanand Sing vs. *The Government of Bengal* (6 M. I. A. 479) it has been *held* that the Ghatwali lands being included in the Settlement and covered by the *jumma* assessed therein, are not liable to resumption by Government for assessment under the provisions relating to *Thanas* or police establishments in Sec. 8, of the P. S. Regulation. Sec. 8, cl. 4 of the Regulation reserved the power of the Government to resume *Thanadari* lands and not Ghatwali lands which are included in the Settlement and covered by the assessment. The P. S. Regulation refers to lands which the Government permitted the Zemindars to hold free from revenue or at a reduced revenue for the purpose of keeping up police establishments. It did not refer to lands which the Zemindars had permitted other persons to hold free from rent or at at reduced rent. The Ghatwali lands fell within this latter class and they were held by a tenure created long before the East Indian Company acquired any dominion over the country. They were appropriated to reward the services of Ghatwals, services which although they would include the performance of duties of police were quite as much, in their origin, of a military as of a civil character and would require the appointment of a very different class of persons from ordinary police officers. Sec. 8, cl. 4 of the P. S. Regulation never contemplated the resumption of these lands which formed part of the Zemindari and were included in and covered by the assessment of 1889-90.

What were the rights reserved by Govt. to itself in making the Permanent

Rights reserved to Government under the Permanent Settlement.—Government reserved to itself the right—

(1) to enact regulations for the protection and welfare of the dependent talukdars, raiyats and other cultivators of the soil;

Settlement ?
B. L. '03, '18(*b*) '17(*b*), '16(*a*) '16(*b*) '14(*b*), 10(*a*) 22(*a*), 23(*a*) 25(*b*).

(2) to re-establish the *sayar* collections or any other internal duties and to appoint officers to collect them ;

(3) to impose assessment on all revenue-free lands held under invalid titles ; and

(4) to resume police-allowances in land or money received by proprietors.

Art VIII. Proprietors may transfer their lands without the sanction of Govt. Provided the transfer be (*a*) conformable to their personal law and (*b*) not contrary to any existing or future Regulations.

8. The Zemindars, independent talukdars and other actual proprietors of land shall be privileged to transfer to whomsoever they may think proper, by sale, gift or otherwise, their proprietary rights in the whole or any portion of their respective estates, without applying to Government for its sanction to the transfer and all such transfers will be held valid, *provided* (*i*) that they be conformable to the Mahomedan or the Hindu laws (according as the religious persuasions of the parties to each transaction may render the validity of it determinable by the former or the latter code) and (*ii*) that they be not repugnant to any Regulations, now in force, which have been passed by the British administrations or to any Regulations that they may hereafter enact. (S. 9.)

State what rights were confirmed in or declared to be vested in the Zemindar under Reg. I, of 1793
B. L. '17(*b*), '17(*a*),'16(*b*), 11(*b*),'11(*a*), 1904.

Rights of the Zemindars under the Permament Settlement :—(1) They were made the hereditary proprietors of the soil, subject to the payment of a fixed amount of revenue to the Government. (2) They were protected from periodical enhancement by the land-revenue being fixed in perpetuity. (3) Their interest in their estates* being *heritable* and *transferable*, they were free to alienate the whole or part of their estates by gift, sale or any other legal process (provided such transfer be not repugnant to any existing law). (4) They were entitled to the rent of all lands, and to exploit the mines and fisheries, within their estates. (5) They were entitled to let out their lands to the subordinate holders on any terms they chose, subject to some restrictions. (6) The Zemindars were entitled to those rights thrown as *jalkur* (right of fishery) *bunkur* (right of cutting wood in jungle or *waste* land) ; *phulkur* (right of gathering the fruits of garden and orchards) and

*An "estate" means any land or share in land occupying a separate number in the Government register of revenue-paying estates.

ghasskar etc. and having come to be regarded in the light of the English landlords, these rights came to be treated as incorporeal hereditaments, and transferable separately from the Zemindary as well as from the land.

Explain :— Julkar, phulkar. B.L. 1925(*a*), '24(*a*), '23(*b*).

Extent of Zemindar's rights under the Parmanent Settlement :—According to Mr. Field the proprietary rights conferred by the Permanent Settlement was really an estate (in legal sense) of much greater dimensions than an English fee simple. Not only were all other estates destroyed to create it, but by the device of the Sale Law as often as the Government-revenue (land tax) was not paid, all subordinate estates created since the Permanent Settlement were annihilated and the higher estates handed over to its new possessor free of incumbrance. But as observed by Maine there seems to be the heaviest presumption against the existence in any part of India of a form of ownership conferring the exact rights which are given by the ownership in fee simple. An English landlord or free holder in fee simple has absolute liberty to dispose of all lands forming part of his estate, to oust the tenants whether for life or for a term of years on the termination of their respective leaseholds and to enhance the rents on the expiration of leases at his direction. The Bengal Zemindars did not possess so unlimited a power over the *khudkast* raiyats and other tenants who have rights in the land, not inferior in validity, though subordinate in degree, of the Zemindars.

Discuss how far the Settlement Regulations of 1793 vested in the Zemindars an absolute estate in their Zemindaris, in other words, conferred on them absolute ownership in fee simple. B. L. 1919(*a*). *"No man is in law absolute ower of lands. He can hold only an estate in them." Explain and discuss this with special reference to India* B. L. 1921(*b*).

In the Great Rent case (*Thakurani Dasi* vs. *Bisweswar Mukherjee*) Seton-kerr, J., observed :—"Neither by Hindu, by Mahomedan or by Regulation law was any absolute right of property in land vested in the Zemindar to the exclusion of all other rights ; nor was any absolute estate, as we understand the same in England, created in favor of that class of persons. The raiyat has by custom, as well as by law, what we may term a beneficial interest in the soil." Similarly, Macpherson, J., remarked :—"As regards the legislation from 1793 down to Act X of 1859, it in my opinion shows clearly that the Zemindars never were and never were intended to be, the absolute proprietors of the soil but that they at all times have held the land subject to the rights of various classes of raiyats whom they had no power to eject so long as the proper

Who were the persons with whom the P. S. was concluded, and what were the rights conferred and obligations imposed upon them ? B. L. 1927(*a*).

rents were paid by them". There was, thus, at first, some conflicts of opinion as to the extent of the rights conferred on the Zemindars by the Permanent Settlement Regulation. According to some it invested the Zemindar with absolute property in the soil leaving the raiyats entirely dependent upon him, except in so far as they were protected by express legislation, while according to others, it did not convey any absolute property of the soil as against the raiyats or other subordinate holders. The conflict was, however, set at rest by the decision in the Great rent case (*Thakurani Dasi v. Bisweswar Mukherjee*, B. L. R. 1865, Suppl. Vol. 202) where it was *held* that the right of the Zemindar was by no means absolute, being limited by the rights of the raiyats and other tenants. The term "*actual* proprietors of the soil" as used in the Regulations, does not mean *absolute* proprietors of the soil against the raiyats, nor is there any thing to show that the terms used are meant to detract from the rights of Government except in the matter of an alteration of the public demand. Trevour J., observed :—"Though recognised as actual proprietors of the soil, that is, owners of their estates, still Zemindars and others entitled to a settlement were not recognised as being possessed of an absolute estate in their several Zemindaries ; there are other parties below them with rights and interests in the land requiring protection, just in the same way, as the Government above them was declared to have a right and interest in it which it took care to protect by law, that the Zemindar enjoys his estate subject to and limited by those rights and interests ; and that the notion of an absolute estate in land is alien from the old Hindu and Mohomedan law of the country." The duties prescribed for the Zemindaries, by Reg. I of 1793 clearly indicate that the actual proprietors were not *absolute* proprietors of the soil. The Permanent Settlement was not intended to alter in any way the status of the Zemindars except by the recognition of them as entitled to be settled with and by the relinquishment by the State of its right to alter the assessment. "I understand the word 'permanency'," observes Lord Cornwallis, "is to extend to the jama only and not to the details of the settlement." The rights which the Government possessed were admittedly not exhaustive of all interests in the land under the customary

law of the country, the raiyats too had rights which the Legislature could not interfere with and it is now settled law that the Permanent Settlement neither did nor could affect or prejudice those tenants' rights in any degree whatever. Beyond fixing the Government revenue for ever, the Permanent Settlement made no alteration in the status of the Zemindars. Of course, a great practical change was made, because the position of the Zemindars was recognised and secured while no safeguard was provided for the raiyats' rights beyond a reservation of the right to enact such Regulations as the G. G. in Council may think necessary for the protection and welfare of the dependent talukdars and raiyats and other cultivators of the soil. (Guha's Land System, p. 41).

Art IX. Rules for apportioning the fixed jama on portions of estates, in the event of their being disposed of at public sale or transferred by the proprietors and on shares of estates divided amongst the joint proprietors.

9. (1) In the event of the whole of the lands of a Zemindar, independent talukdar or other actual proprietor of the land, with, or on behalf of whom a settlement has been, or may be concluded, being exposed to *public* sale by the order of the G. G. in Council for the discharge of arrears of assessment, or in consequence of the decision of a Court of Justice *in two or three lots*, the assessment upon each lot shall be fixed at an amount which shall bear the same proportion to its actual produce, as the fixed assessment upon the whole of the lands sold may bear to the whole of their actual produce And the purchaser or purchasers of such land and his or her or their heirs and lawful suscessors shall hold them at which they may be so purchased for ever.

Note.—In case of the whole estate being exposed to *public sale* for arrears of revenue, in two or more lots—

Actual produce of the *whole* estate. : Its fixed assessment. :: Actual produce of each lot. : The assessment upon the same.

(2) When a portion of the lands of a proprietor shall be exposed to *public* sale for the liquidation of arrears of assessment, the assessment upon such lands, *if disposed of in one lot*, shall be fixed at an amount which shall bear the same proportion to their actual produce, as the fixed assessment upon the whole of the

lands of such proprietor, including those disposed of, may bear to the whole of their actual produce; if the lands sold shall be *disposed of in two or more lots*, the assessment of each lot shall be fixed at an amount which shall bear the same proportion to its actual produce, as the fixed assessment upon the whole of the lands of such proprietor including those sold may bear to the whole of their actual produce And the purchaser or, purchasers of such lands and his or her or their heirs or successors will be allowed to hold them at the jama at which they may be so purchased for ever; and the remainder of the public jama which will consequently be payable by the former proprietor of it that may be left in his or her possession, will continue unalterable for ever.

Note.—In case of a portion of the estate of a proprietor being exposed to public sale for arrears of revenue

(*i*) *In one lot*

Actual produce of the whole estate. } Fixed assessment : upon the whole estate. } Actual produce ::of the portion. } Assessment :required of the portion.

(*ii*) *In two or more lots*

Actual produce of the whole estate. } Fixed assessment : upon the whole estate. } Actual pro :: duce of each lot. } Assessment : upon the same.

Private transfer. Proprietor transferring whole estate in two or more distinct portions to two or more persons jointly or severally.

(3) When a proprietor shall transfer the whole of his or her estate, in two or more distinct portions, to two or more persons or a portion thereof to one person or to two or more persons in joint property, by private sale, gift or otherwise, the assessment upon each distinct portion of such estate, so transferred, shall be fixed at an amount which shall bear the same proportion to its actual produce, as the assessment upon the whole of the estate of the transferring proprietor of which the whole or a portion may be so transferred, may bear to the whole of its actual produce. The purchaser or purchasers of such land and his or her or their heirs and successors will be allowed to hold them at the jama at which they may be so purchased for ever;

and the remainder of the public jama which will consequently be payable by the former proprietor of the whole estate on account of the portion of it that may be left in his or her possession will continue unalterable for ever.

Note.—In case of the proprietor transferring (*a*) the whole estate in two or more distinct portions to two or more persons jointly or severally or (*b*) a portion of such estate to two or more persons—

Actual produce of the whole estate. : Its fixed assessment. :: Actual produce of each portion. : Assessment upon the same.

(4) Whenever a *division* shall be made of lands, that are or may become the joint property of two or more persons, the assessment upon each share shall be fixed at an amount which shall bear the same proportion to its actual produce as the fixed jama assessed upon the whole of the estate divided may bear to the whole of its actual produce. And the sharers and their heirs and lawful successors shall hold these respective shares at the jama which may be assessed upon them, for ever.

Note.—In case of a division of an estate owned by two or more proprietors—

Actual produce of the whole estate. : The whole jama. :: Actual produce of each share. : Assessment for the same.

Actual produce.—By the term "actual produce" is to be understood net annual rent or other net produce receivable by the proprietor after deducting from the gross rent or other gross produce the actual expenses of collection and other usual charges of management inclusive of *pulbandi* or the expenses of embankments and similar incidental expenses where such may be paid by the proprietor from his gross receipts but exclusive of his *malikana* or proprietary income and all other personal appropriations of the gross produce of his estate. (S. 8, Reg. I of 1801). The "actual produce" contemplated by this section shall be ascertained in the

mode that is or may be prescribed by the existing Regulations or such other Regulations as the G. G. in Council may hereafter adopt.

(5) In case of transfers or divisions made by the private act of the parties themselves, such transfer or division shall be notified to the Collector of the Zillah in which the lands may be situated or such other officer as Government may in future prescribe, in order that the fixed jama, assessed upon the whole estate, may be apportioned on the several shares and that the names of the proprietors of each share, and the jama charged thereon, may be entered upon the public registers, and that separate engagements for the payment of the jama assessed upon each share may be executed by the proprietors, who will thenceforward be considered as actual proprietors of land. And if the parties of such transfers or divisions shall omit to notify to the Collector or such other officer as may be hereafter prescribed, for the purposes before mentioned, the whole of such estate will be held responsible to Government for the discharge of the fixed jama upon it in the same manner as it no such transfer or division had ever taken place.

Transfer of portions of estates as dependent taluks not to affect the rights or claims of Govt. in any respect.

(6) But if any Zemindar etc., shall dispose of a portion of his or her lands as a dependent taluk, the jama which may be stipulated to be paid by the dependent talukdar will not be entered upon the records of Government nor will the transfer exempt such lands from being answerable in common with the remainder of the estate, for the payment of the public revenue assessed upon the whole of it, in the event of the proprietor or his or her heirs or successors, falling in arrear in any case whatever, nor will it be allowed, in any case, to affect the rights or claims of Government, any more than if it had never taken place. (S. 10.)

Art. X

Rule for adjusting the jama of lands held khas or let in farm in the event of the whole or any part of them being

10. (1) If the *whole* or a *portion* of the lands of a Zemindar, independent talukdar or other actual proprietor of land who may not have agreed to the payment of the assessment proposed to him or her under the Decennial Settlement Regulations and whose lands are *held khas* or *let in farm*, shall be exposed to public sale in one or in two or more lots, such lands, if *khas*, shall be disposed of at whatever assessment the G. G. in

Council may deem equitable, and the purchaser or purchasers of such lands, and his or her or their heirs and lawful successors shall hold the lands at the assessment at which they may be purchased, for ever. If the lands, at the time of their being exposed to sale shall be *held in farm* and shall be put up in one or in two or more lots, they shall be disposed of under the following conditions :—

disposed of by the public sale or by private transfer or divided amongst the proprietors.

The purchaser or purchasers shall receive, during the unexpired part of the term of the lease of the farmer, whatever such proprietor shall have been entitled to receive in virtue of his or her proprietary rights, on account of the lands so purchased, and such purchaser or purchasers shall engage to pay, at the expiration of the lease of the farmer, such assessment on account of lands as Government may deem equitable.

The sum to be received by the purchaser or purchasers during the unexpired part of the term of the lease of the farmer, and the jama to be paid by such purchaser or purchasers after the expiration of the lease, shall be specified at the time of the sale, and such purchaser or purchasers, and his or her or their heirs and lawful successors, shall be allowed to hold the lands, at the assessment at which they may be so purchased for ever.

(2) If a Zemindar, independent Talukdar or other actual proprietor of land, whose lands are or may be *held khas* or *let in farm*, shall transfer by private sale, gift or otherwise, the *whole* or a *portion* of his or her lands *in one or in two or more lots*, the person or persons to whom the lands may be so transferred shall be entitled to receive from Government (if the lands are held *khas*) or from the farmer (if the lands are let in farm) the *malikana* to which the former proprietor was entitled on account of the lands so transferred.

Explain :— *Khas mahal.* B. L. 1924(*a*).

Malikana—(from *malik* "an owner", "a proprietor") is an allowance for proprietary right generally not less than five and not more than 10 per cent on the net collections of the estate. When a proprietor is removed from the management of his estate on account of his refusal to accept the term of settlement offered to him, he is allowed *malikana* and his estate is held khas [illegible] states are

khas are sometimes managed by Government through its own servants and sometimes let out in farm or *ijara*. Such estates are known as *khas mahals* or estates held by Government standing in the place of a proprietor. Sometimes there is no proprietor, as in the case of waste land or an island thrown up in a large navigable river. Sometime there is a proprietor but he having refused to accept the terms of the Settlement offered to him is allowed a *malikana* and his estate is held *khas*.

Persons to whom such lands may be so transferred will stand in the same predicament as the proprietor of land mentioned in fourth Article, whose lands are held *khas* or have been let in farm, in consequance of their refusing to pay the assessment required of them under the Regulations for the Decennial Settlement and the declaration contained in that Article are to held applicable to them.

(3) In the event of a division being made of lands that are the joint property of two or more persons and which are *held in khas* or *let in farm*, the proprietors of the several shares will stand in the same predicament, with regard to their respective shares, as the proprietors of the land specified in fourth article *supra*, whose lands have been *let in farm* or held *khas*, in consequence of their having refused to pay the assessment required of them under the Decennial Settlement Regulations and the declarations contained in that Article are to be considered applicable to them. (S. 11.)

Give a concise account of the rights of the Govt., the proprietors of the soil, the talukdars and of the actual cultivators of the soil as settled by the P. S.? B. L. 1902; Review the policy of the P. S. B. L. 1910(b).

Effects of Permanent Settlement.—(a) **On the State**—(1) The State had a customary right as proprietor of taking a specific share in the gross produce of the land. By the Parmanent Settlement the State made over this proprietary right, as against the cultivators, to the Zemindar, for a fixed contract sum, reserving its sovereign right of protecting the cultivators of the soil against oppression. [The State had also a sovereign right of taxing all classes of its subjects, including landholders and cultivators. This right was not given away by the Permanent Settlement, and it is on this right that the Government supports the revival of the income-tax against the Zemindars.] (2) The Permanent Settlement,

founded as it was on an imperfectly devoloped rental, has caused a heavy and unwarrantable sacrifice of future revenue to Government. In the interval between 1791 and 1904, the gross rental of the permanently-settled estates rose from 318 to 1472 lakhs of rupees representing an increase of 1154 lakhs. Under a system of of temporary settlement Government would have been entitled to at least 50 p. c. of this increase according to the Saharanpur rule (better known as the half-asset rule) which is now the accepted cannon of assessment in landlord estate. It will thus be seen that in the year 1904 the annual loss to Government entailed by the Permanent Settlement was no less than 519 lakhs of rupees. (*See Guha's Land System*) But Mr. S. C. Mitter in his *Land-Laws* observes :— "It is contended that under the Permanent Settlement there has been considerable loss of revenue to the Government. That may be true as regards the present circumstances, but it must be remembered that at the time of the passing of the Regulation the Government urgently required the fixed land-revenue which could be realized without any difficulty. Such a measure was imperatively necessay for the Government at that time. The policy of Lord Cornwallis in fixing for ever the land-tax payble to Government was a matter of necessity. The necessities of paying the great military and civil establishment of the Company and the dividends to the proprietors required punctual realisation of the land-tax and the amount needed was large. To avoid the fluctuation and ensure punctual realization, some means were absolutely necessary to be adapted and the Government adopted not only the best, but as the event showed, the most successful one. The East India Company would have been reduced to bankruptcy, if they had not adopted the principle of Permanent Settlement. Taking all things into consideration the State has not suffered ; in fact the ancient Rajas and the cultivators have suffered."]

Write a short essay on :—
(a) Policy of P. S.
(b) Position of raiyats under the P. S.
B. L. 1911.
What was the result, immediate or remote, of the P. S.?
B. L. 1915(*a*).
State the effect of the P. S. on the position of the Zemindar, tenure holder and the raiyat?
B. L. 1915(*b*).
What was the effect, immediate or otherwise, of the provisions of Regs. I and VIII of 1783 upon the relation between the Zemindar and raiyats with respect to rent?
State briefly the complication and causes that led to the passing of Act X of 1851.
B. L. 1912(*a*).
What was the immediate effect of the P. S. on the condition of

(3) The Permanent Settlement has avoided all the costs and evils (*e. g.* agricultual disorgainsation and harassment to the tenantry) of temporary periodical settlements and has expedited and assured the punctual realisation of revenue.

(b) On the Zemindar—(1) The Permanent Settlement is the Magna Charta of the landed-aristocracy of Bengal and Behar. It

the cultivators ? B. L. 1917(*b*), 1920 (*b*).

In what way in 1793, were the different classes of land and the persons interested therein dealt with by the Settlement Regulations ? What consequences followed therefrom & what attempts were made and when, to remedy this defect ? B. L. 1915(*a*).

Write a short note on the subsequent legislation for the protection of the raiyats fore-shadowed in Art VII Cl. 1 of Reg. I of 1793. B. L. 1910(*b*).

The Preamble to Reg. II of 1793 runs thus :—"The property in the soil was formally declared to be vested in the land holders." What was the effect of this declaration on landholders and raiyats ? B. L. 1922(*b*).

was beneficial to the Zemindars in as much as they were made the hereditary proprietors of the soil, subject to the payment of a fixed amount of revenue to the Government. They were protected from periodical enhancements by the land-revenue being fixed in perpetuity. They were free to alienate the whole or part of their estates by gift, sale or otherwise and were entitled to let out the lands of their estates to the subordinate-holders on any terms they chose, subject to some restrictions. "There were three parties whose relations had to be determined, *viz.*, the State, the Zemindar and cultivator. The relation between the State and the Zemindar was fixed once for all by the Permanent Settlement. The State made over its proprietary rights, as against the cultivators, to the Zemindar, for a fixed contract-sum reserving its right of protecting them against oppression. The relation between the Zemindar and the raiyat was understood to be that of a proprietor and a tenant, subjectt to some restrictions only." (K. N. Ray's Law of Revenue and Rent, Introduction.)

(2) At the commencement of the British rule, there were two distinct classes of Zemindars in Bengal differing in origin as well as in status. The first class of Bengal Zemindars were territorial chiefs or ancient landed families having an independant title to their estates, subject to the payment of land-revenue while a more numerous class consisted of farmers and revenue-agents of the ruling power who had usurped the status of landlords. "The result of the Permanent Settlement on the status of the Zemindars was to place all classes on a dead level of equality and to obliterate previous differences in customary status of several classes which had grown out of the differences in origin." (Guha's Land-System.)

(3) The system of attachment and sale of the defaulter's estate for arrears of revenue introduced by the Permanent Settlement led to the ruin of many ancient Zemindaris. In fact within the ten years immediately following the Permanent Settlement, a complete revolution took place in the constitution and ownership of the estate which formed the subject of the Settlement. "Before the P. S. the procedure for the realisation of revenue consisted of the attachment of the defaulter's properties and confinement more or less rigorous, of his person, usually ending with the restoration of his estate. In

he place of this apparently rigorous but really wholesome procedure, drastic in its operation and merciful in its ultimate result, the P. S. substituted a stern and invariable rule for the sale of the defaulter's estate." *(Ibid.)*

Reg. I of 1793 has been said to be "the charter of the landed aristocracy of Bengal." How far does it deserve this encomium? B. L. 1922(*b*).

(4) The heavy assessment of revenue fixed by the P. S. and the perfunctory way in which the assessment was made also led to the extinction of many ancient Zemindari houses. The amount of the land-revenue demand was fixed by the P. S. without due reference to the productive powers of the land and other considerations and there was no attempt to measure the land or to estimeate its average produce. Further, the revenue in most cases was too exorbitant and out of proportion (90 per cent) of the assets of the of the estate and required the most attentive and active management to enable the land holder to discharge his instalments with punctuality. But Bengal Zamindars were, as a rule, incapable of such management. "They were too old to shake at a short and sudden notice the lax and irregular habits which had grown upon them through several generations past. It was vain to expect the ancient Zemindars of Bengal, encumbered as they were, with all the costly paraphernalia of their petty courts and military retainers, and accustomed to leave the management of their estates in the hands of dishonest and irresponsible servants to suddenly transform themselves into punctual tax-collectors. The system of sales and attachment of the defaulter's estate for arrears of revenue introduced by the Permanent Settlement has in the course of very few years reduced most of the great Zemindars in Bengal to distress and beggary and produced a greater change in the landed property of Bengal than has perhaps ever happened in the same space of time in any age or country by the mere effect of internal regulation." *(Ibid.)*

Write a short note on the merits or demerits of the Permanent Settlement of Bengal, Behar and Orissa. B. L. 1923(*b*).

Write a short essay on the Permanent Settlement of Bengal, Behar and Orissa, discussing its merits and demerits. B. L. 1925(*a*)

(5) The power of alienation conferred by the P. S. on the Zemindars turned out to be another prolific cause of their ruin. The easy-going Zemindars made so liberal a use of their power of alienation that very few of the ancient houses survived the commotion. The negotiable character imparted to landed estates by the P. S. raised the value of the land and furnished a further incentive to alienation. In addition to this, the Code of 1793 gave the

creditors and mortgagees unprecedented facilities for recovering their debts from the landed estates and considerably helped the ruin of many Zemindars. In the words of Hunter: 'The wave of the P. S. had in truth submerged the ancient house of Bengal. While many historical houses fell beneath the guillotine of the revenue sale-laws, a still larger number were extinguished by their private creditors and the civil courts."

(6) **Sub-infeudations and creation of middle class**—The Permanent Settlement gave an enormous impetus to sub-infeudation of land. Sir George Campbell in his Bengal Administration Report, 1873—74 observes: "At the P. S., Government by abdicating its position as exclusive possessor of the soil, and contenting itself with a permanent rent-charge on the land, escaped thenceforth all the labours and risks attendant upon detailed management. The Zemindars of Bengal proper were not slow to follow the example set them and immediately began to dispose of their Zemindaris in a similar manner. Permanent under-tenures, know as putni tenures, were created in large numbers and extensive tracts were let out on long terms. By the year 1819, permanent alienations of the kind described had been so extensively effected that they were formally legalised by Reg. VIII of that year and means afforded to the Zemindar of recovering arrears of rent from his putnidars almost identical with those by which the demands of Government were enforced against himself. The practice of granting such under-tenures has steadily continued until at the present day with the putni and subordinate tenure in Bengal proper and the farming system of Behar, but a small portion of the permanently settled area remains in the direct possession of the Zemindar." "The revenue being fixed in perpetuity, Government was thenceforth released from labour and risk involved in detailed Mofassal Settlement and the Zemindars were not slow to follow the example set before them. Men who do not like to part with the status of Zemindars by an absolute sale of their property would readily enough raise money by allowing the proprietary right to be curved up into estates of minor value, the whole substance going into the hands of other, while the name alone remains to them. Inferior holders of tenure would follow the same practice till tenure

within tenure became the order of the day. Thus a very considerable class of mere annuitants has been created in Bengal, who have no interest in the land and its improvement. These annuities represent an increase of revenue which might have gone into the coffers of the State. One of the social results of this loss of revenue has been the creation of a considerable middle class which in all probability would not otherwise have sprung so rapidly in a country possessing little or no manufacturing industry." (Field).

(7) The general effect of the Permanent Settlement upon the position of the Zemindar was that the Zemindar was now detached from the Government and lost some of his former privileges and emoluments, while the revenue demanded from him seems to have been very heavy considering the restrictions to which he was theoretically subject. In practice, however, he continued his exactions in much the same way as before ; and from the slender provision made for the protection of the ryots he was enabled to assume a position of preponderating influence, while his ample power, of alienation enabled him to elude much of the Government demand. (Phillips, 334).

(c) **On the Talukdars**—The independent Talukdars or those who paid revenue direct to the State were recognised as actual proprietors of the land and were declared to have the same rights and privileges as the Zemindars. But the dependent talukdars who used to pay revenue through a Zemindar were reduced to the position of tenants.

(d) **On the Cultivators**—(1) The Permanant Settlement made the Zemindars the actual proprietors of the soil and fixed for ever the revenue payable to Government ; but left the Zemindars free to realise any rent they chose from their tenants. The only limitations that the Government thought fit to impose upon the proprietary right conferred on the Zemindars were :—(i) The reservation to Government of the right to legislate for the protection and welfare of the cultivators of the soil by Sec. 8 of Reg. I of 1793 and (ii) the restrictions and safe-guards provided for the protection of the cultivators and others in Reg. VIII of 1793. The safe-guards provided by the Settlement Regulations for the protection of the cultivators were mainly two, viz. (i) the statutory provision about

Effect of P. S. on relation between Zemindar & cultivator.

What was the effect of the P. S. upon the relation between landlords and tenants. ? B. L. 1919(*b*).

Safeguards for protection of cultivators.

the delivery of *Pattas* or leases specifying the area of the holding, the conditions of the tenancy and the rent which should never exceed the established *paragana* rate and (ii) the provisions for the maintenance of the accounts of the raiyats by the *Kanongoes* or the village *Patwaris*. It was expected that these provisions would assure to the cultivators the possession of their holdings on certain specific conditions and at specific rates of rent and provide a record of their rights. But the whole scheme of keeping village accounts by *Kanongoes* and *Patwaris* was a complete failure in practice and the *Patta* Regulations also proved inoperative as they were opposed to the interests of, and were avoided by, both the Zemindar and the cultivators. (*Vide* Guha's Land System, pp. 120—121.) Thus the safeguards provided in Reg. VIII for the protection of the cultivators, became a dead letter in course of a short time; on the other hand, the power reserved by the Government for legislating in favour of the cultivators was not exercised till 1859. The history of these 66 years is a melancholy record of embittered relations between the landlord and tenants which led to serious agrarian disturbances and ruinous litigations. During these 66 years the Bengal cultivators were rack-rented and oppressed to such an extent that the Government of India were compelled to interfere on their behalf and to place them in a secure position by the series of legislative measures commencing with the Rent Act X of 1859.

(2) The Permanent Settlement in leaving the majority of the tenant-class at the mercy of the new proprietors with vague promise of future protection, afforded a good opportunity for putting up peasant holdings to competition and creating competition-rent.

Defects of Permanent Settlement—In addition to the defects pointed out above, the following may be mentioned as the chief defects of the Permanent Settlement :—

(1) **Want of proper safeguards for subordinate interests.**—The chief defect of the measure lay in the absence of any active provision for safeguarding subordinate interests, "The errors of the Permanent Settlement in Bengal were two-fold : *first* in the sacrifice of what may be denominated the yeomanry by merging all village rights, whether of property or occupancy, in the all-devouring recognition of the Zemindar's permanent property in the

soil ; and *secondly* in the sacrifice of the peasantry by one sweeping enactment, which left the Zemindar to make his settlement with them on such terms as he might choose to require." (Colebrook) One of the effects of making the P. S. with Zemindars was that all other rights in land were effaced. It swept the distinction between the different classes of Zemindars as also between raiyats having customary right and others on a precarious footing dependent on mere contract. The rights which now exist are nearly all of recent creation from or after the P. S. (*See* Field) "Grievous as the failure of the Permanent Settlement was, its failure is not due to the fact that the Zemindars were confirmed or that in the unavoidable necessity of defining and securing their position in English legal documents, they were called and made landlords. The evil consisted in this that their right was not limited with regard to all the older raiyats leaving new-comers to be in principle (with such detailed conditions as might be advisable) contract-tenants." (Baden-Powell).

Hindu Mosleim and British rule of proprietorship.

Discuss the theory of proprietary right in the soil in Hindu, Mahomedan and British periods. B. L. '16 (*b*).

What was the King's share of the produce of the land in Hindu times ? What was the right which the King had in the lands

Under the Hindu land system three parties appear to be primarily interested in the land so far as its *produce* was concerned. These were (1) the king (2) the village community and (3) the cultivator. Cultivation being the primary duty of the community, its very existance depending upon it, the cultivator had the lion's share in the produce of the land. But the village had other wants of nature and it maintained a machinery for internal administration with the headman as its chief ; and in lieu of the services rendered by the village officers, each received a share in the produce. The King or the State also had a share in the produce in the village on account of the protection he afforded to the cultivator. But none of the above parties appears to have any *absolute* and *exclusive* right in the land such as an English proprietor has in his estate and the question of ownership of the soil has been a subject of some controversy. The Code of Manu does not distinctly lay down to whom the absolute property in the soil belonged. It has been argued that it belonged to the king, because he was called the "lord paramount, of the soil." The cultivator's proprietary right has, on the other hand, been deduced from the text. "Sages pronounce cultivated land to be the property of him who cut away the wood or who cleared and

comprised in his kingdom? B. L., '18 (*b*).

"All the soil belonged in absolute property to the sovereign, and all private property in land existed by his sufferance." Discuss this, with special reference to Hindu and Mahomedan systems of Jurisprudence. B. L. '24 (*b*).

"No man is in law the absolute owner of lands. He can only hold an estate in them." Explain this with reference to the system of Land Tenures in India. B. L. 1925(*b*).

tilled it"—a general principle which has been recognised in Germany, Java and Russia and indeed in most countries and which is expressly enunciated in Mahomedan law also. It, however, leaves open the question what right of property is aquired, whether absolute and exclusive or only limited—whether in the soil itself or only the right to cultivate it. It has also been said with considerable force that as the king's share of grain was limited to one sixth or at most one-fourth, there must have been another proprietor for the remaining five-sixths or three-fourths. Manu also speaks of the owner of land and appears to contemplate exclusive and perhaps individual rights in land. The owner of a field, for instance, is directed or advised to keep up sufficient hedges, he is entitled to the produce of the seeds sown by another in his land unless by agreement with him ; and to the produce of seeds conveyed upon his land by wind or water. The case of a dispute between neighbouring landholders or villagers as to boundaries is contemplated and a penalty provided for forcible trespass upon another's land. The sale of land is also spoken of in connection with the sale of metals. These passages indicate that some kind of exclusive right was contemplated but they fail to show whether the *owner* spoken of had anything more than a right to cultivate and appropriate the produce and such possession as might be necessary for the purpose. Besides the owner's rights in the land, Manu recognises an obligation upon him to cultivate the soil. It is said "if land be injured by the fault of the farmer himself, as if he fails to sow it in due time, he shall be fined ten times as much as the King's share of the crop that otherwise have been raised, but only five times as much as if it was the fault of his servants without his knowledge. According to Manu, the king's share in the produce was one-eighth, one-sixth or one-twelvth, according to nature of the soil and the labour necessary to cultivate it : but in times of prosperity the king should only take one-twelvth, while in times of urgent necessity he might take one-fourth ; this is the king's due on account of the protection he was bound to afford to the cultivator. The king was also entitled on the same ground to half of old hoards and precious minerals in the earth. " The king was thus clearly recognised as entitled to a share in the produce ; he was bound to protect the husbandman and the

husbandman was bound to cultivate in order that they might jointly have increase of the land. This would seem to indicate something less than an absolute or exclusive right to the soil in either. (Phillip's Land Tenures p. 4 *et seq* ; Roy's Rent law, Introduction.) It is now recognised principle that the ownership as conceived by the people of the earliest times was with the village community which doubtless existed before kings or Sovereign. "The soil is the common property of all and they through their efforts enjoy the fruits thereof."(Sayana) The village in fact was the key to the Hindu land system. The Hindu village appears to have grown out of the joint family, the unit of Hindu society. The Hindu race seems to have moved in families and colonised as well as conquered the country and the joint-family with its developments to have gradually formed a village. Again, new villages were similarly formed in the course of progress by off shoots from the original stock and colonisation expanded over a large area. Thus, at the outset, the village-community was primarily an association of kinsmen and collection of families united by the tie of a common descent. But gradually some extraneous elements were introduced into and amalgamated with the community. Struggle for existence with man, savage enemies and nature forced an amalgamation of strangers with the village group and united them in the same brotherhood. By this process the community gradually consisted of divisions into several paralled social strata. There were first certain number of families who were traditionally said to be descended from the founder of the village. Below them there were others distributed into well ascertained groups. The end for which the village community existed was the tillage of the soil and it contained within itself the means of following its occupation without help from outside. Besides the cultivating families who formed the major part of the group, it comprised families hereditarily engaged in the humble arts which furnished the little society with articles of ease and comfort. It included a village watch and village police and these systematised authorities for the settlement of disputes and the maintenance of civil order. It was in short a little republic or corporation which was almost self-governing. As Lord Metcalf says : "The village communities are little republics having nearly everything that they want within

themselves and almost independent of any foreign relations." So long as the structure of the village community was simple, *i. e.* so long as it was a mere association of kinsmen and a collection of families united by the assumption of a common lineage, the ideas of rent and of the relation of landlord and tenant were dormant. All that was cared about was the subsistence of the common group, which the soil could yield. The village lands were at first held in common by the families composing the community. At some period of the existence of the community, however, a further development took place, when a division appears to have been made of the cultivated lands into equal shares probably amongst the then existing families; and the proprietary equalities of the families composing the group was further secured by a periodical redistribution of the several-assignments. Gradually the share of each family was stereotyped and redistribution ceased to exist. The original shares continued thenceforth to be preserved as the primary division of the village and the subsequent subdivisions were into fractions of such shares. When this stage was reached any new comer would only be admitted on terms of paying money or rendering service for the use and occupation of the land. (*Ibid*)

Mahomedan period. Mahomedan made very few changes in the existing system.

In all matters relating to the land, the Hindu system remained substantially unchanged by the Mohomedans. The same parties, the cultivator, the village community and the king or the State existed during the Mohamedan period, but the village was gradually repressed and the Zemindar took its place. * The Mahomedans recognised the rights then claimed in the land and made no deliberate change at all in the nature of the rights in the land or even in the fiscal machinery. "The Mahomedans did not consciously alter the rights of any of the parties; they strove to expel the hereditary

* But although little was formally changed at the Mahomedan conquest, the seeds of much practical change were sown. The power of the Zemindars has, to a great extent, been built upon the ruins of the Hindu system. They were at first recognised as officers or partly as officers and partly as persons with a certain interest in the revenue derived from the Hindu times; but the indirect effect of their recognition by the State at a time when the old Hindu forces of joint property and hereditary right were weakened, tended to give them a larger right than they had ever ventured to claim; just as the recognition of the Zemindars as proprietors at the Permanent Settlement has tended to make them in practice absolute proprietors. (Phillips, 63.)

principle with respect to the officers of the revenue and they strove equally to raise the rate of revenue; but they do not appear to have intended to alter the relation of the parties amongst themselves or even to alter the relation to the State." (Phillips, 60) * It would, therefore, seem that the right to the soil was undisposed of under the Mahomedan system as in the Hindu times and it must have resided in the general community and the State as its representative. (Phillips, 229)

But the English in India started with assumption that "all the soil belongs in absolute property to sovereign and that all private property in land exist by his sufferance." With this idea the Government in 1793 made the Permanent Settlement. The existence of private property in land which was the fundamental doctrine of the Hindu Jurisprudence and which even the Mahomedans did not put out of sight was entirely ignored. The State assumed to itself and made over to the Zemindars its own supposed proprietary right to the soil as if the cultivator had no right to hold land against the will of Government and its grantees. To repeat the words of the Preamble to Reg. II of 1783 "the property in the soil was formally declared to be vested in the land-holders,' but adequate provisions were not made for the protection of the class of persons who were the real proprietors of the soil, and who deserved, for their weakness, the largest amounts of protection from the hands of Government. (S. C. Mitter's Land Laws.) British period.

Lord Cornwalis was sanguine that the effects of the limitation of the public demand and the Permanent Settlement with the Zemindars, would place the relations between the Zemindars and the

* The Mahomedan epoch is famous for the development of Zemindars. The village community appears to have gradually sunk and to have lost its importance as a fiscal unit, under the Mahomedan rule. Its principle as the outcome of the joint family, was alien to the Mahomedan ideas of personal and individual right, joint families being unknown amongst the Mahomedans. In those parts of the country where the village communities were in vigour, the headmen seem to have retained their position to some extent and to have dealt with the State direct as huzooree malgoozars under the old Hindu titles of Mokuddums, Munduls or Bhuinias (or Zemindars). But in other places the ancient rajas and revenue collectors became talukdars and zemindars and collected the revenue as such, *aumils* being appointed to check or control them. These zemindars and talukdars generally contrived to absorb the functions or at least the chief emoluments of the headmen and to displace them to a great extent. Thus arose zemindars and talukdars out of the ancient rajas, collectors, farmers and other officers of revenue, headmen and even robber chiefs. (Phillips, 65 *et seq.*)

raiyats on a proper footing. He was convinced that if the Zemindars were made proprietors, subject to the payment of a fixed revenue or land-tax, they would of themselves and for their own interest, adjust the relation between them and their raiyats on a satisfactory footing and that enough would be done, if the right of interference, should it be necessary, were retained. The result has shown how grievously he was mistaken. The right of interference was reserved, but it was not exercised until 66 years (when Act X of 1859 was passed) and it was then too late." (Field).

The Permanent Settlement of 1793 has but little to recommend it either for study or for imitation. In its inception it was a benevolent blunder based on too great a trust in the Zemindar's good sense and in its result it has produced obstacle to the progress of the country. "Never was there any measure conceived in a purer spirit of generous humanity and disinterested justice than the plan for the P. S. in the lower Provinces. It was worthy of the soul of a Cornwallis ; yet this truly benevolent purpose, fashioned with great care and deliberation has, to our painful knowledge subjected almost the whole of the lower classes throughout these provinces to most grievous oppression— an oppression too so guaranteed by our pledge that we are unable to relieve the sufferers."* (Lord Hastings.)

(2) Sacrifice of future revenue—The P. S. has restricted the financial resources of future Government, by limiting the taxation of land and has led to an inequitable adjustment for them. "The effect of the P. S. is practically this, that the Government of the day, selects a certain class of estates and says you shall never

*The latter part of this remark is hardly just to Lord Cornwallis. "I understand the word "permanency" he observes, "to extend to the *jumma* only, and not to the details of the settlement, for many regulations will certainly be hereafter necessary for the further security of the raiyats in particular and even those talukdars who, to my concern, must still remain in some degree dependent on the Zemindars but these can only be made by government occasionally, as abuses occur; and I will venture to assert that either now or ten years hence or at any given period, it is impossible for human wisdom and foresight to form any plan that will not require such attention and regulation. I can not however admit that such regulations can in any decree affect the rights which it is now proposed to confirm to the Zemindars. I will never allow that in any country Government can be said to invade the rights of subject when they only require for the benefit of the State, that he shall accept of a reasonable equivalent for the surrender of a real or supposed right which in his hands is detrimental to the general interest of the public or when they prevent his committing cruel oppressions upon his neighbours or upon his own dependents." (Roy's Law of Rent and Revenue, Introduction.)

be called on to bear more than a certain share of the public burdens, no matter what your neighbours pay." (Baden-Powell, p. 348) Mr. Guha in his *Land System* observes: "The policy of the Permanent Settlement is open to condemnation on another ground; it was founded on an imperfectly developed rental, which necessarily involved the sacrifice of future revenue created not by expenditure of landlord's capital but simply by the exercise of proprietary power in increasing the relative share of the produce which constitute rent. From a revenue point of view it is unsound to make the assessment permanent so long as there is room for the extention of cultivation and for the further development of the recources of the country. The sacrifice of revenue involved in a premature settlement in perpetuity is gratuitous and indefensible in as much as the increase of income to the proprietors does not represent the profit of capital invested on the faith of such settlement but mere assertion by the proprietor of a larger and more legitimate share in already existing assets.....Lord Cornwallis seems to have thought that the permanence of the assessment was bound up with the security of the title to the estate. His process of reasoning seems to be more spacious than sound. Re-assessment, based on increase in the value of land and rise in prices, does not affect or unsettle the fixed rights of property, any more than a revision of the income-tax render the position of capitalist as a man of property insecure. (Guha's Land System).

(3) The Permanent Settlement has checked the growth of industrial and commercial development of the country. "One important consequence of this institution" (the Permanent Settlement), says Mr. Guha, "has been to lock up all surplus capital in land and to encourage a tendency towards the accumulation of hoarded wealth which leaves but little available for productive investments .....The vast wealth and commercial eminence attained by the merchant princes of the Bombay Presidency which is not under the Permanent Settlement are in striking contrast with comparatively slender resources of the Bengal land-owners."

(4) "A certain school of thinkers seems to entertain the idea that the Permanent Settlement has been the means of developing in Bengal an exceptional flow of public spirit and of charitable

investment. There is undoubtedly a number of worthy and liberal minded land-holders in Bengal as there is in other parts of India. This is the result of individual culture and enlightenment and not of any particular system of assessment. So far from any credit being due to the Permanent Settlement for the creation of such public spirited land-lords as exist in Bengal, it is a matter of common knowledge that the evils of absenteeism, of management of estates by unsympathetic agents, of unhappy relations between land-lord and tenant, and of the multiplication of tenure-holders or middlemen between Zemindar and the cultivator are marked features of the Bengal system." (Guha's Land System.)

(5) "One of the pious hopes expressed by the authors of the Permanent Settlement was that 'the proprietors of land sensible of the benefits conferred upon them by the public assessment being fixed for ever will exert themselves in cultivation of their land under the certainty that they will enjoy exclusively the fruits of their own good management and industry." It is deeply to be deplored that the conduct of the Bengal landlord has furnished a melancholy antithesis to the expectations formed of them. As a body they have shown but little disposition to lay out money on the improvement of their estates, either from motives of prudence or profit or from public spirit. It is hardly any exaggeration to say that they have converted themselves into mere annuitants and have as a body failed to show a practical appreciation of the responsibilities of their position or of the duties which they owe their tenantry." (*Ibid*). "He (proprietor) did nothing for the land and even when there was no glaring personal defect, the climate and the habits of the country unfortunately suggested that he should save himself the trouble by farming out his estate to any one who would give him largest profit over and above his revenue payment. And as the proprietor's farmer in time grew rich, what with freedom from war and security and daily increasing value of land, so he too farmed his interest to others still farm within farm became the order of the day, each resembling a screw upon a screw, the last coming down on the tenant with the pressure of them all." (Baden Powell's Land System, p. 407). "According to theory one should find the permanently settled estates in the most flourishing condition with all

manner of improvements introduced and landlords very well-to-do and most liberal to their tenants. But in fact in riding through these villages and through the parganas generally, you would not detect anything in the appearance of the people and land, in the number of wells and other means of irrigation, the kind and look of the crops, the size of the houses, the air and condition of the people and the cattle, to make you suspect that the permanently-settled land-owners enjoy a different tenure from their neighbours of similar caste and condition in temporarily-settled estates. There is as much capital laid out and industry bestowed on land in the one set of estates, as in the others." (*Reid.*)

The Bengal Decennial Settlement Regulation.

(VIII of 1793.)

A—Parties with whom Settlement concluded :—

With what classes of persons was the Permanent Settlement made ? B.L., 1923(*a*), 1926(*a*).

1. Settlement ordinarily to be concluded with the actual proprietors of the soil.—The Settlement under certain restrictions and exceptions hereafter specified, shall be concluded with the actual proprietors of the soil, of whatever denomination, whether *Zemindars, Talukdars or Choudhuris.* (S. 4.)

What were the salient features of the Settlement ? B.L. 1926(*b*).

Exceptions :—The exceptions to the general order for the conclusion of the Decennial Settlement with the actual proprietors of the soil, include the following descriptions of persons :—

What whom was the Settlement concluded and who were excluded ? B. L. 1906, 1908, 1910(*a*) 1913(*a*),'17(*a*) '17(*a*), 21(*a*).

(*a*) Disqualified proprietors, that is,

(i) Females (excepting those whom the G. G. in Council, may judge competent to manage their estates) ;

(ii) Minors ;

(iii) Idiots ;

(iv) Lunatics or . .

Who were the perpons with whom the P. S. was concluded, and what were the rights conferred and obligations imposed upon them ? B.I., 1927(*a*).

(v) Others rendered incapable of managing their estates by natural defects or infirmities of whatever nature. (S. 20.)

Management of lands of disqualified proprietors :— If the disqualified proprietors, referred to above, are the *sole* owners of their estates, their estates shall be managed for their benefit by persons appointed to the trust by Government. (S. 21) But if these disqualified proprietors are not themselves the *sole* owners of their estates but are only partners in the estates held by them, with others who are not disqualified, these qualified proprietors or their guardians may jointly with their partners engage for the settlement of their estates and elect a joint manager for the management of their estates. (S. 20).

(*b*) Proprietors in balance to Government and unable to pay the arrears due from them. (S. 22.)

In such cases no settlement is to be concluded with the defaulting proprietors, but their estates shall be let in farm or held *khas* for a period of three years at the direction of the Collector.

Talukdars :—The word *taluk* is derived from the Arabic word 'alak' which signifies 'to hang from,' 'to depend upon' and means a dependence. Taluks are of two kinds :—(1) *Independent* or *Huzuri* taluks which pay revenue direct to *Huzur* or Govt. These are also called *Kharija* taluks, *i. e.*, taluks outside the Zemindari estate and control. They constitute estates or proprietary interests analogous to those of the Zemindars under the Permanent Settlement. This class comprises those that paid revenue direct to Govt. before the P. S. or were since separated from the Zemindaries to which they appertained. Talukdars of thus description differ but little from Zemindars, except in the limited extent of territorial jurisdiction. (2) *Dependent* or *Muzkuri* or *Shikami* or *Shamilat* taluks which pay revenue through a Zemindar or other actual proprietor of estate. These taluks are tenures and not estates within the meaning of the B. T. Act and do not constitute any proprietary interest as contemplated by the Settlement Regulations. For incidents of these taluks *see* Chapter III of the B. T. Act.

In Upper India, the taluk was dependent upon and subordinate to, the Sovereign. In Bengal, taluk was subordinate

to the Zemindari but not always. The larger talukdars were *huzuri*, i. e. they were immediately under the supreme Government, to which they paid their revenue direct: while the smaller ones were *mazkuri* or specified, i. e. in the sanad of Zemindar, through whom they paid their revenue. Doubtless all were originally *huzuri*, but when the revenue came to be collected through the Zemindars, the smaller talukdars were directed to pay their revenue through this channel in order to avoid inconvenience of a multiplicity of small payments into the khalsa or treasury of the State.

Government recognised the independent talukdars as actual proprietors of land and they were allowed to enter into direct engagements at fixed sums of revenue payable in perpetuity into the Collector's treasury. These taluks have the same incidents as the Zemindaries and the talukdars have the same rights and obligations in relation to the estate as the Zemindars. Reg. VIII of 1793 laid down distinct rules for the guidance of Collectors for separate settlement with independent talukdars. A large number of taluks was thus separated and recognised as *estates* before the year 1802. (Since 1802, no new independent taluk can be created in this way).

Separated Talukdars where to pay revenue.

Talukdars ordered to be separated from the Zemindars or other actual proprietors of estate through whom they heretofore paid their revenues, are to pay their revenue in future immediately into the Collector's treasury, and not through the Zemindars or other actual proprietors of estates, as heretofore. But in districts where, from the number of taluks or other cause, this mode would be attended with considerable inconvenience, *tahsildars* or native collectors are to be appointed to receive the revenue of the taluks in such districts. (Secs. 13-15) [Zemindars or other actual proprietors of land from whose Zemindaries or estates, taluks may be separated, shall not be appointed tahsildars to receive of the revenue of the taluks so separated, but the office of tahsildar shall, in every instance, be given to some other person of character and responsibility and the whole expense of it is to be defrayed by Government. (S. 15).]

What classes of talukdars were consi-

Dependent Talukdars—The following became dependent talukdars in Bengal, Behar and Orissa :—

dered as dependent talukdars at the time of the Permanent Settlement ? B. L., 1900.

(*a*) Talukdars who at the time of the Decennial Settlement paid their revenue through a Zemindar or other actual proprietor and whose title deeds contained a stipulation that it should be so paid.

(*b*) Talukdars, then holding under grants from Zemindars or other actual proprietors which grants did not expressly transfer the property in the soil, but only entitled the talukdars to possession so long as they paid the rent reserved and performed the other conditions of the grant.

Explain Jungalbari lease. B. L., '24 (*a*).

(*c*) *Jangalbari* talukdars holding on leases made in perpetuity to the grantee and heirs in consideration of his clearing away the *jangal* and bringing the land into a state of cultivation exempt from revenue for a certain time and afterwards holding at a fixed amount of revenue, with the right of alienation.

(*d*) Invalid grants of revenue-free land not *exceeding one hundred bighas*, resumed by proprietors, farmers, etc., under the provisions of Ss. 6 and 9, Reg. XIX of 1793.

(*e*) Talukdar who did not apply for separation of their taluks within one year from the date of Reg. I of 1801.

S. 51 of Reg. VIII of 1793 aims at protecting the dependent talukdars from undue exactions.

Independent talukdars :—The following became independent talukdars in Bengal, Behar and Orissa :—

(1) Talukdars who purchased their lands by private or at public sale or obtained them by gift from the Zemindar or other actual proprietor of land to whom they used to pay the revenue assessed upon their taluks or from his ancestors, subject to the payment of the established dues of Government and who received deeds of sale or gift of such land from the Zemindar or *sanads* from the *khalsa*, making over to them his proprietary rights therein.

(2) Talukdars, whose taluks were formed before the Zemindar or other actual proprietor of land to whom they now pay their revenue, or his ancestors, succeeded to the Zemindari.

(3) Talukdars, the lands comprised in whose taluks were never the property of the Zemindar or other actual proprietor of the soil to whom they now pay their revenue or his ancestors.

(4) Talukdars who have succeeded to taluks of the nature of

those described in the above clauses by right of purchase, gift or inheritance, from the former proprietor of taluks.

(5) *Malguzari aima* tenures held at a fixed quit revenue, under grants of the Mahomedan Government previous to the Company's accession to the *Dewani* or which have been since granted by proprietors of estates for a consideration received by them, were separated from the proprietors to whom they used to pay their revenue, and considered as independent taluks. But *malguzari aima* tenures which were *bonafide* granted for the purpose of bringing waste lands into cultivation were considered as dependent taluks falling within the category of *Jangalburi* taluks.

In case of undivided estates, determination of majority of proprietors to be binding on the rest in agreeing or disagreeing to the jama. But sharers, if dissatisfied may obtain a division of their lands.

2. Where more proprietors than one possess an undivided estate and the whole of them be not within the description of disqualified proprietors specified above, settlement is to be made with them jointly and the determination of the majority of the proprietors present is to be binding on the remainder, in agreeing or disagreeing to the jama proposed for such estates. The sharers, however, if dissatisfied, may obtain a division of their lands and a proportionate allotment of the revenue assessed thereon, but at their own expense. (S. 26.)

In case of joint estates, settlement to be made for each share separately.

3. When a portion of lands stands in the joint names of several proprietors, or of one for many but each proprietor has his separate share in his own possession and management or in that of an agent for him the settlement is to be made for each share with the person in possession, and his land is to be held exclusively responsible for the revenue assessed upon it. (S. 27.)

In case of disputed estates, settlement to be made with the proprietor in possession.

4. Where the property in lands is disputed, the settlement is to be made with the proprietor in possession, under the express declaration that he is nevertheless liable to the claims upon the estate which is to be transferable to any other to whom the property may be subsequently adjudged. (S. 30.)

In case where none of the claimants has been pre-

5. If a case should occur, in which none of the claimants has been previously in possession they are to be allowed to appoint a manager until their claims are determined in the *Dewani Adalat* of the *Zilla*; but if they should not agree to a manager, the lands are to be

viously in possession.

held *khas*, and the surplus produce, after discharging the revenue, is to be kept in deposit until the right of property shall be adjudged. (S. 31.)

Settlement in case of disputes as to boundaries.

6.* Where disputes exist concerning the boundaries of land they are to be left to be adjusted in the *Dewani Adalat* and the settlement is to be made in the mean time for the lands in possession of the disputing parties respectively. (S. 32.)

Settlement with certain Istimrardars.

7. *Istimrardars*, who have not got possession of their lands to the exclusion or without consent of the actual proprietors but hold them of the proprietors on *patta* or lease shall be considered as a species of patta talukdars and the settlement shall be made with them. (S. 19.)

B.—Rules of Assessment :—

Allowances of *Kazis* and *Kanungoes* and public pensions to be added to the Jama.

1. The allowances of the *Kazis* and *Kanungos* heretofore paid by the landholders, as well as any pensions hitherto paid through the landholder are to be added to the amount of the *jama*. These will be, in future, paid by the Collector of the district on the part of Govt. (S. 34.)

Assessment to be fixed exclusive of *sayar* with exceptions.

2. The assessment is to be fixed exclusive and independent of all duties, taxes and other collections, known under the general denominations of *sayar*, excepting the collections, (*a*) made in the *ganges* and *bazars* situated within the limits of the town of Calcutta or (*b*. confirmed to the proprietors and holders of ganges, bazars and hats by the G. G. in Council. (S. 35.)

Lakhiraj lands to be excluded from assessment.

3. The assessment is also to be fixed exclusive and independent of all existing *lakhiraj* lands, whether exempted from the *khiraj* or public revenue, with or without due authority. (S. 36.)

Explain the term 'Khiraj' B. L. 1910(*b*).

Note.—Article VII of Reg. I of 1793 reserves to Govt. the right to impose due assessment on lakhiraj land held under illegal or invalid titles. *Vide* Regs. XIX and XXXVII of 1793.

Explain the incidents of Lakhiraj tenure. B. L. 1912(*b*). *What do you understand*

Lakhiraj.—Lakhiraj (derived from *la*—not and *khiraj*—tribute, revenue) means land which does not pay revenue to Govt. It is the largest estate or assemblage of rights in land in the Lower Provinces of Bengal. The tenure possesses all the incidents and

advantages of a *Zemindari* tenure, with this additional one that as it pays no revenue to Govt. it is not liable to sale for arrears of revenue and consequently there is no mode of avoiding incumbrances created *by lakhirajdars*. The Regulations of 1793 divide revenue-free grants into two classes—Badshahi and non-Badshahi See *infra*.

by lakhiraj ? B. L. 1918(*a*) 1923 (*a*), 1925 (*a*).

4. The above exception, however, is not meant to include the *malikana* lands in Behar or the *nankar, nij-jote* and other private lands of the Zemindars and independent talukdars or other actual proprietors of land in Bengal and Midnapore, regarding which the following rules have been prescribed. (S. 37.)

Malikana lands and nankar etc. not to be excluded from assessment.

Malikana.—In Bengal, the expression "*Malikana*" means an allowance granted to a proprietor who refused to accept settlement of revenue. See *ante*. The expression is not always used in the same sense in Behar. There it is usually applied to those cases in which proprietors selling their estates, stipulate that so much land, generally from that held in direct cultivation, be assigned to them in perpetuity for their maintenance with or without the payment of rent. They cease to be responsible for the revenue and in this way retain sufficient land for their subsistence. Such lands are called *Malikana*.

How were lakhiraj lands dealt with by Reg. 8 of 1793 for the purpose of settlement of jama of Zemindars? B. L. 1905, 1910 (*a*), 1912 (*b*).

Nankar—Nankar (*lit.* bread for work) was an assignment of land or revenue for subsistence, consisting sometimes of one or more entire villages, sometimes of a portion only of a village. It was made in some instances to proprietors and in other instances to persons having no proprietary rights, such as *kanungoes, mukaddams, choudhris, kazis*, who were generally however servants of the State and it was doubtless in this capacity that the allowance was made to Zemindars. (Field) The difference between *nankar* and *malikana* is that *malikana* is the unalienable right of proprietorship but *nankar* depends upon fidelity and attachment to the State and a due discharge of the public revenues. When a proprietor was removed from the management of his estate, *malikana* was allowed to him but *nankar* was usually withdrawn.

What is meant by Chakran lands ? How were they dealt with by Reg. 8 of 1793 for the settlement of the revenue of the estates to which they appertained ? B.L. 1905, '09, 1910 (*b*), 1911 (*a*).

Khamar, nij or nij-jote—These expressions denote the proprietor's private lands or lands appropriated to the subsistence

What do you understand by Lakhiraj

Lands, Istimrari lands, Nankar and Chakran lands ? What steps were taken by Govt. with regard to these lands in connexion with the P.S. of 1793 ? B.L. 1910 (*a*).

of the proprietors and their families as distinguished from those let out to the tenants, which may be called raiyati-lands and in respect of which the proprietor's rights are merely to receive a share of the produce or its equivalent in money as rent. It should be observed that it is only proprietors that can have private lands and not tenure-holders and others. Sec. 116 of the Bengal Tenancy Act provides that no occupancy-right or non-occupancy-right can be acquired in a proprietor's private lands known in Bengal as Khamar, *nij* or *nij-jote* and in Behar as *Zerat*, *nij*, *sir* or *kamat* where such land is held under a lease for a term of years or under a lease from year to year. (*See* Author's Student's Bengal Tenancy Act, 4th edition, p. 187 *et seq*).

Malikana lands to be re-annexed. *What were the general rules for assessment of Govt. revenue under Reg. VIII of 1793?* B.L. 1913(*a*). *What lands and allowances were excluded from the P. S.?* B. L. 1908. *State briefly the provisions made for the disposal of those lands.* B. L. 1903.

5. (1) Where the Zemindars or other actual proprietors of land in Behar have resigned, or have been deprived of, the management of their lands, retaining possession of a tithe as *malikana*, the latter is to be re annexed, and the Zemindars or other actual proprietors are to be required to engage for the whole of their estates, including the *malikana* lands, unless such lands be held as *malikana* under grants made or confirmed by G. G. in Council or the supreme authority of the country for the time being and have been sold or mortgaged, and given in possession to the mortgagee in which case they are to be exempted from this rule. Grants for *malikana* lands not made or confirmed by the supreme authority of the country, are declared invalid by the Regulation passed on the 8th of August, 1788.

(2) If the Collectors, however, should be of opinion that any material injury will be done to any individual by the execution of these orders, they are to report the circumstances to the Boad of Revenue. (S. 38).

Nankar &c. to be annexed to malguzari lands.

6. (1) The *nankar*, *khamar*, *nij-jote* and other private lands appropriated by the Zemindars, independent talukdars and other actual propritors of land in Bengal and Orissa, to the subsistence of themselves and their families, shall be also annexed to the malguzari lands and the jama fixed upon the whole.

What lands, if any, were

(2) But if such proprietors decline to engage for their lands, they will be allowed the option of retaining

possession of their private lands above specified upon the terms on which they have hitherto possessed them : *Provided* they can prove that (a) they held them under a similar tenure previous to the 12th August, 1765 (the date of the grant of the Dewani to the Company) and (b) have hitherto been permitted to keep possession of them whenever their Zemindaries or estates have been held *khas* or let in farm, but not otherwise.

excluded from assessment at the time of the Permanent Settlement ? B. L. 1900, 1903, 1906, 1913 (*a*).

(3) In the event of such proof, and of their availing themselves of the option above given to retain possession of their private lands, a deduction adequate to the net produce of such lands is to be made from the allowance fixed for excluded proprietor. (S. 39.)

7. The above consolidation of malguzari and private lands is also to be made in the taluks continued under the proprietors on whom they have hitherto been dependent ; not, however with a view of increasing the rents of the talukdars, but in order to make the whole of the lands composing their taluks answerable for their proportion of the public assessment allotted thereon. (S. 40.)

Consolidation of malguzari and private lands in certain taluks.

8. The *chakran* lands or lands held by public officers and private servants in lieu of wages in each province are also to be annexed to *malguzari* lands and declared responsible for the public revenue assessed on the Zemindaries, independent taluks or other estates in which they are included in common with all other *malguzari* lands therein. (S. 41.)

Chakran lands to be annexed to malguzari lands.

Explain the origin of choukidari chakran land and the shape these lands assumed after the Decennial Settlement of 1789 and the Permanent Settlement of 1793 and their nature. B.L. 1924(*b*).

Chakran—*Chakran* or service-tenure is a grant of land conferred by Zemindars upon their servants or retainers in consideration of public or personal services to be rendered by them. Before the advent of the British, the Zemindars not only defended the country against foreign enemies with armed retainers but also administered the law and maintained order with a large force of rural police known as *thanadars, phauridars, choukidars, paiks* etc., who helped in protecting person and property, collecting revenue and doing other services personal to the Zemindar. They were at the time servants of the Zemindar, appointed and removed by him and often remunerated by grants of land, rent-free or at a quit-rent. The lands so held were called *chakran* or service-lands. A service tenure created

Explain the term "Chakran". B.L. 1924(*b*),

1916 (*a*), 1925 (*a*). *Explain the expression chakran tenure.* B. L. 1918(*b*), 1923 (*b*)· *Explain the expressions :— Malikana lands, Malguzari lanas and Chakran lands. What provisions are made in Reg.8 of 1793 in respect of the assessment of each of these lands ?*

for the performance of services, private or personal to the Zemindar may be resumed by him, when the services are no longer required or when the grantee refused to perform them. A Zemindar is, however, not entitled to resume, when the grant is for services of a public nature. There are various forms of service-tenures of which the *choukidari*, *thanadari* and *phauridari chakran*, the *patwari* and *paikari jagirs* and the *ghatwali* tenures are the most important. (Guha's Land system, p. 415) The Decennial Settlement Regulation divided *chakran* lands into two classes, namely—

I. *Thanadari* lands, which by cl. 4, art. 6 of Reg. 1 of 1793 were made resumable by Govt.

II. All other *chakran* lands, which by S. 41. Reg. VIII were, whether held by public officers or private servants in lieu of wages, to be annexed to the *malguzari* (revenue-paying) lands and declared responsible for the public revenue assessed upon the whole estate.

B.L. 1919(*b*), 1911 (*a*). Procedure in case of landholders declining to engage for jama proposed to them.

9. In the event of any proprietor declining to engage for the settlemet of his lands at the jama proposed to him, the Collector is to communicate the objections offered with his opinion respecting them to the Board of Revenue. That Board is to determine the proper assessment after making such further enquires as they may think necessary, and the objecting proprietor is to be required to engage for such assessment without further delay ; and in the event of his refusal, which is to be given in writing, his lands are to be let in farm or held *khas*, as the Board of Revenue may, in each instance, think most expedient. (S. 43.).

Certain istimradars not liable to increase of rent. *Explain the incidents of the following classes of land tenures :— Lakhiraj, Nankar, Sir*

10. (1) *Istimrardar* (*mukararidars*) who have held their land at a fixed rent for more than 12 years, are not liable to be assessed with any increase, either by the officers of Govt. or by the Zemindar or other actual proprietor of land, should he engage for his own lands.

Istimrarari mukari tenures—*Istimrari* (or *mouroosee*) tenures are tenures granted in perpetuity. *Mukarari* tenures are those granted at a fixed rent and not liable to enhancement. Generally speaking, however, the two conditions are now found

combined ; and where the term is in perpetuity, the rent is fixed for ever. These tenures are transferable and inheritable, and may be protected by registration from the effects of a revenue-sale. On failure of the heirs of the lessee, an absolute hereditary and mukarari tenure escheats to the Crown and does not revert to the grantor or his heirs. (1 Cal. 319). See chapter III, Bengal Tenancy Act.

and Malikana. Were these classes of land included in the assessment of estates made under the provisions of Regs. I and VIII of 1793? What treatment did these lands receive under these Regulations and how was the proprietary right in respect of them adjusted ? B.L. 1912(*b*). Exception to above.

(2) With regard to such *istimrardars* also, as have not held their lands at a fixed rent for so long a period, if the Zemindar or other actual proprietor of land has bound himself, by the deed which he may have executed, not to lay any increase upon them, he shall not be allowed to infringe the conditions of the deed for his own benefit, but must confine his demands to the rent he may have agreed to receive. (S. 49.)

(3) But this last restriction imposed on the Zemindar or other actual proprietor of land is not to be considered to preclude the officer of Govt. or farmer, in the event of the Zemindari being held *khas* or let in farm, from assessing such *istimrardars* according to the general rule of the district. (S. 50.)

What do you understand by istimrari & mukarari tenures ? B.L., 1910(*a*), 1918(*b*) '21 (suppl.)'22(*a*).

C. Rights and obligations of proprietors under the Settlement Regulations.—

Rules to prevent undue exactions from talukdars.

1. (1) No Zemindar or other actual proprietor of land shall demand an increase from the talukdars dependent on him although he should himself be subject to the payment of an increase of jama to Govt., except upon proof (*a*) that he is entitled so to do, either (i) by the special custom of the district or (ii) by the conditions under which the talukdar holds his tenure or (*b*) that the talukdar, by receiving abatement from his jama, has subjected himself to, the payment of the increase demanded and (*c*) that the lands are capable of affording it.

What are the limitations imposed by Reg. VIII of 1793 upon the demand that a Zemindar can make of an increased jama from dependent talukdars and of current as well as of

(2) If in any instance, it be proved that a Zemindar or other actual proprietor of land exacts more from a talukdar than he has a right to, the court shall adjudge him to pay a penalty of double the amount of such exac-

new awabs from raiyats ? B.L. 1911(*b*)

tions with all costs of suit, to the party injured. (S. 51.)*

Power of proprietor to let remaining lands as they think proper.

2. The Zemindar or other actual proprietor of land may let the remaining lands of his Zemindari or estate in whatever manner he may think proper, subject, however, to the following restrictions :—

(*a* Every engagement contracted with under-farmers shall be specific as to the amount and conditions of it ; and all sums received, over and above what is specified in the engagement, shall be considered as extorted and be repaid with a penalty of double the amount. (S. 52.)

Lands let out not to be taken charge of without *amalnama*.

(*b*) No person contracting with a Zemindar, independent talukdar or other actual proprietor or employed by him in the management of the collections, shall be authorised to take charge of the lands or collections without an *amalnama* or written commission, signed by such Zemindar, etc. (S. 53)

Abwab etc. to be consolidated with *asal jumma*.

(*c*) The imposition upon raiyats, under the denomination of *abwab*, *mathaut*, and other appellations, from their number and uncertainty, having become intricate to adjust, and a source of oppression to the raiyats, all proprietors of land and dependent talukdars shall revise the same, in concert with the raiyats, and consolidate the whole with the *assal* into one specific sum. (S. 54.)

Note—At the time of the Permanent Settlement there had gathered around the customary rent a number of *abwabs* and S. 54 of Reg. VIII of 1793 directed the consolidation of the whole of such imposition with the customary rent into one specific sum which would thenceforth be the rental of the land.

Proprietors and farmers of land prohibited from imposing new *abwab* or *mathaut* on raiyats. *Explain the expression— Mukrari tenure.* B.L. 1923(*b*), 1925 (*a*) *What provision regarding imposi-*

(*d*) No proprietor of land or dependent talukdar, or farmer of land, shall impose any new *abwab* or *mathaut* upon the raiyats under any pretence whatever.

Every exaction of this nature shall be punished by a penalty equal to three times the amount imposed, and if,

* Secs. 51-55 and 64-65 have been repealed in Bengal (except Calcutta, Orissa and the Scheduled district) by the Bengal Tanancy Act. (VIII of 1885).

at any future period, it be discovered that new *abwab* or *mathaut* have been imposed, the person imposing the same shall be liable to this penalty for the entire period of such impositions. (S.55)

tion upon raiyats of abwab are contained in Reg. VIII of 1793 ? B.L. 1901, 1911 (*b*).

Abwab—*Abwab* is the plural of *bab*—a head, an item ; and means "item" or "miscellaneous items." i. e., of taxation. When the Mogal authorities desired to levy an additional sum, the usual way of accomplishing their object was, not by increasing the original amount of revenue agreed for with the Zemindar or farmer, but by imposing a tax for some particular purpose, which tax was levied in a fixed proportion to the original *jama* or revenue. The purposes or pretexts, for which these miscellaneous taxes or *abwabs* were imposed, were numerous. The following were some of the main abwabs levied by the Mahomedan rulers :—*Chauth Maratta*, in order to pay tribute of *one-fourth* of the *jama* levied by the Mahrattas ; *abwab faujdari* or fees for the support of the chief police Magistrate and administration of criminal justice ; *abwab radhari*, for the repairs of roads ; *Sar mathaut* consisting of four items *viz.*, presents at the Punya or annual settlement of the revenue ; charge for *khilats*, or honorary dresses for the members of Government ; charge for repairing the banks of the river at Murshidabad and fees to the Nazir who commanded the escort, which brought the collections to head quarters ; *Khas navisi*, fees for the Govt. accountant ; *Sarfi-Sikka*, an impost to cover the loss on the exchange of coins of different mints. The Zemindars in their turn levied from the raiyats all the *abwabs* that they themselves had to pay generally contriving to make a profit out of the transaction ; and they further imposed additional *abwabs* of their own devising and for their own benefit, e. g., *abwab mehmani* to defray the expenses of the Zemindar on his visiting the village ; *haldari*, a tax on marriages. Any unusual occurrence, a Governor's visit or a petty war on some distant frontier was and is made a pretext for imposing a new cess. (Field pp. 60-61, foot-note)

Explain the term 'abwab' B.L. 1910(*b*).

Trace the history of abwab from the Mahomedan times and state what changes were introduced in this respect by the Decennial Settlement ? Can abwabs be, in any case, legally recovered from tenants under the present rentlaw (Act VIII of 1885? B.L. 1912(*a*).

What are Abwabs or Mahuts ? Can a landlord realive them from a tenant ? State the law regarding them. B.L. 1922(*b*).

What do you understand by the term abwab ? How did it originate ? How has the realization of

The Zemindars and other proprietors, being themsevles exempted by the Permanent Settlement from the imposition of any new *abwab* or cess to Government were directed in concert with the raiyats

an abwab been affected by several enactments ? B.L. 1918(*a*).

to revise the former cesses levied upon the latter, and to consolidate the whole with the *asal* (original rent) into one specific sum, after which they were strictly forbidden to impose any new *abawab* upon the raiyats under any pretence whatever. * Every such exaction was to be punished by penalty equal to three times the amount imposed for the entire period of the imposition (Ss. 54 & 55, Reg. VIII of 1793 ; S. 3. Reg. V of 1812 ; Cl. 1, S. 9, Reg. VII of 1822 ; S. 9, Reg. IX of 1825 and S. 5, Reg. XXX of 1803.)

What provisions regarding abwabs are contained in Reg. VIII of 1793 ? B.L. 1901, 1915 (*a*).

The Bengal Tenancy Act also declares the *abwabs, mathuts*, etc. illegal and any stipulation for its payment void (S. 74). † It further provides that "every tenant from whom, except under any special enactment for the time being in force, any sum of money or any portion of the produce of his land is exacted by his landlord in excess of the rent or interest lawfully payable may, within six months from the date of the exaction, institute a suit to recover from the landlord, in addition to the amount or value of what is so exacted such sum by way of penalty as the court thinks fit not exceeding Rs. 200 or when double the amount or value of what is so exacted exceeds Rs. 200, not exceeding double that amount or value." (Sec. 75, B. T. Act of 1885).

Is a claim for the recovery of an abwab existing before the P. S. enforceable in law ? B. L. 1910(*b*).

What are abwab and mathauts ? Can a landlord realise them from a tenant ? Is there is any prohibition in respect of their realisation ? State the laws as to such prohibition. B.L. 1910(*a*).

What is or is not an abwab ?—What is or is not an abwab must depend upon the circumstances of each particular case in which the question arises If a particular sum specified in the lease or a suit to be paid is the lawful consideration of the use and occupation of the land, that is to say, if it is really part of the rent, although not described as such, the landlord would be entitled to recover the same and the whole question in the case is whether the items claimed are really part of the rent, which was the consideration for the letting out of the land. Where it was stipulated in the lease in the year

Can abwab be in any case legally recovered from tenants under B. T. A ? B. L. 1912 (a).

* Consequently an *abwab* payable at the time of the P. S. unless consolidated with the rent under S. 54 of Reg. VIII of 1793 cannot be recovered (17 Cal. 131).

† But in permanent mokarari leases created *after the B. T. Act came into force, abwabs* may be stipulated for and realised and there is no bar to it (7 C.W. N. 608)—*Vide* the Author's Student's Bengal Tenancy Act, 4th Ed. P. 221 Abwabs are not however recoverable from a permanent tenure-holder under a lease created *before* B. T. Act. They could not be recovered under Reg V of 1812 and Act X of 1859 and cannot be recovered owing to the operation of section 2, cl. (4) of the B. T. Act which provides that the repeal of any enactment shall not revive any right, privilege, matter or thing not in force or existence at the commencement of the Act (4. C. L. J. 527.)

1874 that the tenant would pay a fixed *jama* of Rs. 4310 of which the sum of Rs. 4300 was described as *jama*, Rs 5 as *Salami Touji* and Rs. 5 as *Tehwari dasturi* it was held that the stipulation or reservation for the payment of *Salami* and *Tehwari* was not stipulation or reservation for the payment of arbitrary or indefinite cesses but in the language of cl. 3 of Reg. V 1812 was a definite clause in the engagement contracted between the parties which should be maintained and given effect to. (*Kalanund Singh v, Eastern Mortgage Agency Co Ltd.*, 18 C. L. J. 83.

Is there any connection between the awabs and the prevalence, if any, of customary rent in this province? If so, trace such connection specially noting its effect, if any, of the statutory abolition of abwabs on customary rent in this province. B. L. 1912(*b*).

History of Rent in Bengal—* "Rent in Bengal has followed a peculiar course of development and in its present condition is the resultant of several contending forces such as custom, competition and legislation." (Guha's Land System, 148). In the early Hindu period, the cultivator directly delivered to the representative of the Crown a definite proportion of the produce of the soil as the "King's share." Viewed in the light of the modern conception of rent, the share of the produce taken by the King was rather in the nature of a tax than of rent. The germ of rent, however, existed in the Hindu village communities of the later days, when strangers were allowed to cultivate the land of the village on condition of giving the "King's share" of the produce and an additional share to the Zemindar or other person who had rights of ownership in the land and by whose permission they cultivated. This additional share was rent—rent paid in kind as all rent was, before the general use of money. The amount of rent payable was regulated entirely by customs in this period. But there was no such thing as rent under the Mahomedan rule, for the policy of the Mahomedan rulers did not recognise any intermediary between the cultivator and the Crown. Even where there was an intermediary he was rather a collector of revenue and such dues as he might intercept might more properly be called fees or perquisites, than as rent in the proper sense of the term. With the decline of the Mogul Government the system of farming out the revenue came into vogue and led to the creation of a new type of intermediaries who took advantage of the declining Government to intercept more than their due share

What do you understand by customary rent and competition rent? Write a short essay on the history and prevalence or otherwise of both these classes of rent in the province of Bengal from pre-British days down to the present time. B.L. 1912(*a*).

Define competition rent. Did Govt. adopt or approve of this basis of rent when promulgating the Permanent

* For a fuller treatment of the subject, the readers should read Guha's Land-System and Field's Bengal Regulations from which most of the materials of this topic have been borrowed.

Settlement and does competition rent prevail under the Bengal Tenancy Act? B. L. 1915 (*b*).

of the collections by imposition of arbitrary exactions and illegal cesses. Gradually the rent was so much overlaid with illegal cesses that it now formed but a small part of the amount levied and entirely lost its original character. During this period the influence of custom was suspended while that of competition did not as yet assert itself. The policy of the British Government was from the very beginning directed to the creation of rent-receivers. In dealing with Bengal, they sacrificed everything in order to revive and foster the growth of this class and if they did not create the principle of rent, they certainly restored it to the same, if not to a more advanced, stage of devolopment in which the Mahomedan invasion found it. (Field)

Write an essay on "Rent is a British creation." B.L. 1910(*b*).

It is sometimes said that rent is a British creation. This, according to Mr. Field, is true *first* in the sense that the fund from which much of the present rent is paid is the fruit of the peace which the British Government have kept and of the moderation of their fiscal demands; and *secondly*, in the sense that the competition rent had no existence in India before the British rule and so far as it has come into being, it is wholly due to the influence of the British Government and to the results which have accrued therefrom. In the pre-British days, rent in India was never competitive but it was customary. The circuitous mode of increasing rent by means of abwabs, indicates the prevalence in this country of a real customary rent. Had there been an acknowledged right in the landlord to increase the rent, this circuitous mode would never have been resorted to. In India the raiyats had customary rights which could not be safely infringed in any direct way. The raiyats were not mere tenants-at-will but were entitled to retain their lands so long as they paid customary rent. * Custom is still to a consi-

* The following passage from Mill's Political Economy may be quoted in illustration of this view :—"In India and other Asiatic communities similarly constituted, the ryots or peasant farmers are not regarded as tenants-at-will nor even as tenants by virtue of a lease. In most villages there are indeed some ryots on this precarious footing consisting of those or the descendants of those who have settled in the place at known and comparatively recent period : but all who are looked upon as descendants or representatives of the original inhabitants, and even many more tenants of ancient date, are thought entitled to retain their land as long as they pay the customary rents. What these customary rents are or ought to be has indeed in most cases become a matter of obscurity; usurpations, tyranny and foreign conquest having to a great degree obliterated the evidences of them. But when an old and purely

derable extent the foundation of rent in Bengal. The Permanent Settlement recognised the validity of the then existing customary rates of rent. The Bengal Tenancy Act also refers to customary or *pargana* rate and saves custom where it is not inconsistent with its provisions. The prevailing rate spoken of in the Bengal Tenancy Act is but another form of the old *pargana* rate and Sec. 7 of the Act expressly speaks of customary rent. Even now the influence of competition is not quite paramount. A rise of prices, for instance, even in unfettered tenancies does not necessarily entail a concurrent rise in rent : the rental in such cases rises, as a rule, considerably after prices and by no means in exact conformity with them. (Guha, 154 footnote.) Mr. Field observes :—"The state of things in which land is regarded merely as one of the many modes of investing capital, and is competed for up to the point at which it yields a profit at least equal to that which can be obtained from other objects of investment, never existed in India. At no period antecedent to our rule did population reach a point which rendered it necessary to cultivate the worst land and resort to improved means of agriculture in order to raise from the soil food sufficient to feed the people of the country. In favourable seasons the land with little labour gave them enough and more than enough for the year's supply. Seldom looking further, or perhaps careless, if indeed they were permitted, to accumulate a store which might tempt the cupidity of those in authority—when the season was very unfavourable and famine came amongst them, they regarded the visitation as a decree of Fate, and passively endured as inevitable what they never imagined that human policy could alleviate or prevent. There was no competition for land as means of creating capital out of capital or of raising additional food to feed an

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Hindoo principality falls under the dominion of the British Government, or the management of its officers, and when the details of the revenue system come to be enquired into, it is usually found that though the demands of the great landholder, the State, have been swelled by fiscal rapacity until all limit is practically lost sight of, it has yet been thought necessary to have a distinct name and a separate pretext for each increase of exaction; so that the demand has sometimes come to consist of thirty or forty different items in addition to the nominal rent. This circuitous mode of increasing the payments assuredly would not have been resorted to if there had been an acknowledged right in the landlord to increase the rent. Its adoption is a proof that there was once an effective limitation, a real customary rent : and that the understood right of the ryot to the land, so long as he paid rent according to custom, was at some time or other more than nominal."

increase of population, or provide against years of scarcity." The British legislation relating to rent started from the basis of custom and while accepting the legitimate influence of competition sought to confine it within reasonable limits by law. The Rent-Commissioners observe :—"Rent can only be settled by custom, competition or by law ; and in as much as on account of the disturbing element of the sale-laws, custom had not settled rent and in as much as the ruling power has a right to determine the rent payable by the raiyat to the Zemindar, the Govt. ought to determine what share of the produce should be fair for the former to recover from the latter." The history of the evolution of rent under the British rule may be divided into two periods :—(1) the early British period (1765—1858) during which competition came into play and to a great extent counteracted the force and effect of custom and (2) the latter British period commencing from 1859, during which the Legislature stepped in for the regulation of the rent. The devastations of the great famine of 1769-70 which had swept away one-third of the inhabitants of Bengal reduced the population to a point much below that required for the cultivation of all the village lands. Consequently, at the commencement of the British rule, "there was no competition amongst the cultivators for land, for there was more land than there were men to till it or flocks to graze upon it and the raiyats who were pressed in one place beyond what they would or could bear removed to another place, where the interests of a new master were the most effectual barrier to oppression. Thus if there were any competition at all, it was competition amongst the Zemindars for raiyats and not amongst the raiyats for land." But within less than 50 years, the population reduced by the great famine, recouped its loss and rapidly increased under the peaceful and prosperous administration of the British Govt. This revolutionised the relation of labour to land, and set up a competition for land. In 1770, the landlords were competing for tenants but in 1819 the tenants were competing for land. To add to the miseries of the tenants, the P. S. and the legislation following it, left the Zemindars virtually free to enhance the rents of their tenants and to subject them to their absolute and arbitrary will. In 1859, however, the Govt. intervened for the purpose of protecting the poor

and helpless tenants against the evil effects of competition rents and enacted Act X of 1859 laying down some rules for regulating the settlement of rent between the Zemindars and tenants which were subsequently developed and brought into conformity with the modern agrarian exigencies in the Bengal Tenancy Act, 1885.* (*See* Guha's Land System.)

• **Competition rent**—According to the Political Economists of of the West rent is "the excess of profit after the repayment of the whole cost of production beyond the legitimate profit which belongs to the tenant as a manufacturor of agricultural produce" or "that portion of the value of the whole produce, which remains to the owner of the land, after all the out-goings belonging to its cultivation, have been paid, including the profit of capital employed." This theory postulates (*a*) the application capital to land and (*b*) the remuneration of the cultivator at the bare wages of unskilled labour. It cannot possibly have any operation in Bengal, as none of the two supposed conditions exist here. In Bengal, the raiyats of the privileged classes having acquired by custom a limited property in land and a prescriptive status superior to that of the ordinary landless fieldlabourer is entitled to higher wages. They have a lien on the soil beyond the wages of labour and the profit of stock. It is also a matter of common knowledge that in Bengal, little or no capital is employed in agriculture—nothing in fact beyond the ordinary implements, the seed grain and sometimes a small stock of grain laid by against years of famine. The appropriate theory of rent applicable to Bengal is that it is not surplus profits of capital applied to agriculture but that it is such a proportion of the produce of the soil as the Government may from time to time determine as payable by the tenant to his landlord, leaving enough to the raiyat to enable him to carry on the cultiuation, to live in reasonable comfort, and to participate to a reasonable extent in the progressing prosperity of his native land. (Guha, 160). "From the peculiar course of progress in England and from that state of

* Even new competition rent exists in Bengal to a considerable extent, as a result of economic causes. The B. T. Act also does not bar any competition-rent at the time of any new settlement. Such land as is not in possession of raiyats having a right of occupancy is more or less competed for. In some districts, competition is tolerably keen. (Field, p. 53 footnote.)

affairs under which the absolute ownership of the lands was, from the close of the 17th century in the hands, not of the cultivators but of a limited class of proprietors who were all powerful in the legislature to regulate its measure with a view to their own interests above all others, there has been evolved a theory of rent, which although it may be scientifically correct with reference to the peculiar circumstances of England, is not equally correct when applied, and is in many instances not at all applicable, to other countries and other communities whose past history and present conditions are in many respects, if not altogether, different." (Field). The Calcutta High Court at first lent a countenance to the above theory but soon changed its view. In 1865 a Full Bench repudiated this doctrine as inapplicable to the customs and conditions of the country. As the produce of the soil is divided between the landlord and the cultivator, the prosperity of the latter depends upon the proportion exacted by the former as rent. When the share or rent is regulated by competition, its rise or fall depend upon the relation between the demand for land and the supply of it. As the land is a fixed quantity, while population has a tendency to increase the competition for land, when keen, tends to force up rent to the highest points, reducing the cultivator's share to a bare living wages. In these circumstances the results of competition rent would be disasstrous for the tenantry if its influence were not tempered by custom. The growth of a custom securing permanency of tenure without liability to enhancement would provide an insurance against the evils of competition. But as we have seen above, the Permanent Settlement and the legislation which immediately followed it, particularly the Revenue Sale Law, arrested the development of custom and stimulated the growth of competition rents and of illegal exactions and placed the raiyats in an extremely insecure and helpless position. In this circumstaces, the Government iu 1859 stepped in to the aid of the poor and helpless tenants and put a check on the determination of the rent by the uncontrolled influence of competition and the arbitrary will of the Zemindar by the enactment of certain rules for regulating the enhancement of rent in Act X. of 1859. (See *supra*).

(*e*) The proprietors of land, dependent talukdars and farmers of land, are to adjust the instalments of the rents receivable by them from their under renters and raiyats, according to the time of reaping and selling the produce and they shall be liable to be sued for damages for not conforming to this rule. (S. 64). Proprietors to adjust kists of rent.

(*f*) No proprietor of land or dependent talukdar shall contract any engagement with any under-farmer or authorise any act contrary to the letter and meaning of this Regulation. (S. 65). Proprietors etc. not to enter into engagement contrary to the Reg.

(*g*) Zemindars, independent talukdars and other actual proprietors of land, dependent talukdars, farmers of land holding farms immediately of Government and all persons farming lands of the above-mentioned descriptions of land-holders and farmers of land and their respective officers, agents, servants, dependants and raiyats are prohibited from taking coginzance of, or interfering in, matters or causes comming within the jurisdiction of the courts of civil judicature, or the Magistrates, under pain of being liable to the payment of such fine to Government and damages to the party injured, as the court of Judicature in which they may be prosecuted for the act may deem it proper to impose and award (S. 66). Landholders etc. prohibited from interfering in matters within cognizance of civil courts or Magistrates.

(*h*) All proprietors of land shall appoint a Patwari in each village in their estates to keep the accounts of the raiyats and shall deposit in the Dewani Adalat (Civil Court) of the Zilla, the Collector's *Kachari* and the principal *Kachari* of each mahal or perganah, a list of the patwaris in their respective estates and the names of the villages the accounts of which they are to keep. (S. 62).

Rules regarding Patwaris—The annual revenue to be paid to Government from the estates of the proprietors of land with whom a settlement has been or may be concluded having been declared fixed for ever, and Courts of Justice having been established with powers to protect them against all demands exceeding that fixed revenue, whether made by the officers of Govt. or other persons or by the authority of Government itself; and on the other hand the grounds, on which deductions and abatements were

Explain the term "Patwari." B.L. 1910(*b*).

heretofore occasionally obtained by proprietors of estates when their *jama* was liable to frequent variation, no longer existing—neither their rights nor the value of their property can be affected in future by the real produce of their estates being known. The rules therefore hereafter prescribed regarding *patwari*, which are framed solely to facilitate the decision of suit in the Courts of Judicature between proprietors and farmers of lands and persons paying rent or revenue to them and to guard against any diminution of the fixed revenue of Government or injustice to individuals by enabling the collecters to procure the necessary information and accounts for allotting the public *jama* upon estates that may be divided agreeably to the principles prescribed in Reg. I of 1793, can be objected to by those proprietors only, who may have it in contemplation in the event of the division or transfer of a portion of their estates to deprive Government of a part of the fixed revenue, or defraud some of the partners in their estates by obtaining a disproportionate allotment of the public assessment of the several shares or to oppress the persons paying rent or revenue to them with impunity by withholding from the Courts of Justice the documents necessary to enable them to afford redress to the complainants. It being essential to the security of the public revenue as well as of private raiyats and property and at the same time consistent with the ancient usages of the country and the declaration of the proclamation announcing the public assessment on the lands fixed for ever, that Government should have the means of counteracting such unjustifiable views, the following rules are adopted :—

Object of the rules.

Proprietors to appoint a *patwari* to keep the accounts of each village.

(1) Every proprietor of land, shall appoint a *patwari* in each village in his or her estate to keep the accounts of the raiyats. All proprietors of estates are to deposit in the *Dewani adalat* of the Zillah, the Collector's *Kachari*, and the principal *Kachari* in each mahal or parganah, a list of the patwaris in their respective estates and the names of the village, the accounts of which they may be severally appointed to keep. The proprietors are to notify every three months to the Court and the Collectors all vacancies that may occur and the names of the persons whom they may appoint to fill them. The Board of Revenue are empowered to authorize any

Board of Revenue may authorise proprietors to reduce the number of *patwaris*.

proprietor to reduce the number of *patwaris* in such proportion as they may think proper, in cases in which it may appear to them unnecessary to entertain a separate patwari for each village.

Duties of patwaris: Patwaris to produce all accounts required by the courts of Judicature.

(2) The *patwari* in every estate are to produce all accounts relating to the lands, produce, collections and charges of the village or villages, the account of which may be kept by them respectively and to furnish every information and explanation that may be required regarding them, whenever they may be required by any Court of Justice to adjust any suit that may be depending before the Court between the proprietors or farmers of the estate and the raiyats or any persons paying rent or revenue to them or any other suit.

And also for the allotment of the public revenue in the cases herein specified, when required by the Collector.

(3) The *patwaris* in each estate shall also produce the accounts specified in the preceeding clause and furnish every explanation and information that may be required respecting them for the allotment of the public revenue agreeably to the principles laid down in Reg. I. of 1793, in the event of the whole or any portion of the estates being directed to be disposed of at public sale or being transferred by any private act of the proprietor or proprietors of the estates being ordered to be divided pursuant to a decree of a Court of Judicature or where it may be joint estate, in consequence of the request of one or more of the proprietors.

Cases in which the Collectors are prohibited from requiring accounts from *patwaris*.

(4) But no Collector is to require a *patwari* to attend him and produce his accounts, but for the purposes above mentioned or in any other cases in which they may be expressly empowered to require them by any Regulation.

Penalty for breach of the prohibition.

If any Collector shall require the *patwari* of any village or villages to attend him and produce the village accounts for purposes or in cases in which he may not be authorised to inspect them the Court of Dewani Adalat upon the circumstance being represented to it by the proprietor of the estate is empowered to make an order to prohibit the Collector requiring the accounts and in the event of his repeating the requisition, to adjudge him to pay a fine to the proprietor of the estate of such sum as to the Court may appear proper.

How the Collectors and the

(5) When a Collector shall require the attendance of a *patwari* for the examination of his accounts either before him or any officer whom he may depute for the purposed he is to serve such *patwari*

courts are to compel the attendance of *patwari*.

with a written notice under his official signature and the seal of the Zillah to attend with the accounts required which are to be particularised in the notice. If he shall omit to attend with the accounts by the limited time and shall not show good cause to the Collector for the omission, the Collector is authorized to represent the circumstances through the Vakil of Government to the Court of of Dewani Adalat of the Zillah, the Judge of which, provided there shall appear to him sufficient cause for so doing, may order such *patwari* to be committed to close custody until he produces the accounts. The Courts are to observe the same process with *patwaris* who may omit to attend with their accounts when required for the adjustment for any matter or dispute depending before the Courts.

Patwaris may be required to swear to the truth of their accounts.

(6) *Patwaris* shall be required to swear to the truth of the accounts they may produce when deemed necessary and in the event of the Collector having occasion to proceed in person or to depute an officer to examine any village accounts on the spot, the Judge, upon application being made to him for that purpose by the Collector through the Vakil of Government may grant to him or such officer, a commission to swear the several *patwaris* whose accounts are to be inspected, inserting in the commisson the name of each *patwari* to be sworn. If the Collector shall have occasion to examine the the accounts of a *patwari* at the station at which the Court may be established he is to cause him to be sworn before the Court, if he shall judge it necessary to require him to mak oath to the truth of his accounts.

Patwaris liable to be prosecuted criminally for swearing to false accounts in a court of Judicature or before a Collector.

(7) If a *patwari* shall have sworn to the truth of any account that he may have been required to produce before a Court of Justice for the purpose of deciding any matter before the Court, and the accounts shall afterwards be found to have been fabricated or altered or not to be true accounts, the Judge of the Court is empowered to commit him to be tried for perjury before the Court circuit.

Punishment for proprietors or farmers concerned in

(8) If a *patwari* shall have been sworn before a Judge or before a Collector or the officer of a Collector to any accounts that he may have been required to produce before the Collector or his officer, in case in which the Collector may have been empowered

to require him to produce such accounts and the accounts shall afterwards appear to have been fabricated or altered or not to be true accounts, the Collector is empowered to employ the Vakil of Government to prosecute such *patwari* for perjury. In the cases specified in this and the preceding clause, if it shall be proved to the satisfaction of the Court that the accounts were fabricated, altered or changed by the orders, or with the knowledge or connivance of the proprietor or farmer of the estate, the Court shall impose such fine upon the proprietor or farmer so offending as may appear to it proper, upon a consideration of the case and the situation and circumstances of the offenders.

falsifying the accounts.

(9) Upon the accounts of any village being ordered to be produced, if it shall be found that no *patwari* has been appointed to keep the accounts of the raiyats, the Court, provided it be a case in which the requisition of the accounts may be authorized, shall fine the proprietor for the first offence in such sum as it may judge proper upon a consideration of his or her situation and circumstances and the nature of the case; and for the second offence, twice the amount of the fine for the first, and for the third and every subsequent offence, double the amount of the preceding one. If the accounts shall have been required by the Collector, he is to order the Vakil of Government to sue the proprietor on the part of Government for breach of rule in clause (1) above.

How proprietors omitting to appoint *patwaris* are to be proceeded against.

(10) The rules contained in this section shall equally apply to dependent taluks as well as to estates paying revenue immediately to Government.

Above rules regarding *patwaris* applicable also to dependent taluks.

Application of the Regulation.—If in any instance the Regulations should appear inapplicable to the circumstances of any particular district, the Collector should attend to the spirit of them and carry them into execution in such mode as circumstances might allow, reporting any alterations or modifications which he might deem necessary, (But this rule is not to be construed to empower the Collector to exercise any judicial authority). [S. 67 (5)].

Collector to attend to the spirit of the rules in this Reg. where they may not be applicable to particular districts.

Regulation II of 1793.

Indicate the legislative measures which were enacted by Govt. by means of Reg. I, II & VIII of 1793, with view to bring about an improvement in agricultural operation & thereby an increase in the produce of the soil. B.L. 1912(*b*).

Object and reasons of the Regulations—In Bengal, the greater part of the materials required for the numerous and valuable manufactures, and most of the other principal articles of export, are the produce of the lands. It follows therefore that the commerce and consequently, the wealth of the country must increase in proportion to the extension of its agriculture. But it is not for commercial purposes alone that the encouragement of agriculture is essential to the welfare of these provinces. The Hindus who form the body of the people, are compelled, by the dictates of religion to depend solely upon the produce of the lands for subsistence ; and the generality of such of the lower orders of the natives as are not of that persuasion are, from habit or necessity, in a similar predicament.

Write a short essay on "the policy of the P. S." B. L. '11 (*a*), 1910 (*b*).

The extensive failure or destruction of the crops that occasionally arises from drought or inundation is, in consequence, invariably followed by famine, the ravages of which are felt chiefly by the cultivators of the soil and the manufacturers, from whose labours, the country derives both its subsistence and wealth.

Indicate briefly the rights conferred on proprietors by Reg. I of 1793 B. L. '11 (*a*), 1904, 1905. *What considerations led to the enactment of Reg. II of 1793?* B.L. 1918(*a*).

Experience having evinced that adequate supplies of grain are not obtainable from abroad in seasons of scarcity, the country must necessarily remain subject to these calamities until the proprietors and cultivators of the lands shall have the means of increasing the number of the reservoirs, embankments and other artificial works, by which, to a great degree, the untimely cessation of the periodical rains may be provided against, and, the lands protected from inundation ; and as a necessary consequence, the stock of grain in the country at large shall always be sufficient to supply those occasional, but less extensive, deficiencies in the annual produce, which may be expected to occur, notwithstanding the adoption of the above precautions to obviate them.

Give the substance of the Preamble to

To effects these improvements in agriculture, which must necessarily be followed by the increase of every article of produce, has, accordingly, been one of the

primary objects, to which the attention of the British Administration has been directed, in its arrangements for the internal government of these provinces. *Reg. II of 1793.* B. L. '13 (*a*). 1918 (*b*).

As being the two fundamental measures essential to the attainment of it, the *property in the soil has been declared to be vested in the land-holders, and the revenue payable to Government from each estate has been fixed for ever.* These measures have at once rendered it the interest of the proprietors to improve their estates, and given them the means of raising the funds necessary for the purpose. Main provisions of the Permanent Settlement.

The property in the soil was never before formally declared to be vested in them, nor were they allowed to transfer such rights as they did possess, or raise money upon the credit of their tenure without the previous sanction of Government. With respect to the public demand upon each estate, it was liable to annual or frequent variation at the discretion of Government. The amount of it was fixed upon an estimate formed by the public officers of the aggregate of the rents payable by the raiyats or tenants for each bigha of the land in cultivation, of which, after deducting the expenses of cultivation, ten-elevenths were usually considered as the right of the public, and the remainders the share of the landlord. Refusal to pay the sum required of him was followed by his removal from the management of his lands, and the public dues were either let in firm or collected by an officer of Government, and the above mentioned share of the land holder, or such sum as special custom or the orders of Government might have fixed was paid to him by the farmer or from the public treasury. When the extention of cultivation was productive only of a heavier assessment, and even the possession of the property was uncertain, the hereditary land-holder had little inducement to improve his estate, and moneyed men had no encouragement to embark their capital in the purchase or improvement of land, whilst not only the profit, but the security for the capital itself, was so precarious.

Further measures, however, are essential to the attainment of the important objects above stated.

All questions between Government and the landholders respecting the assessment and collection of the public revenue, and disputed claims between the latter and their raiyats or other persons concerned in the collection of their rents, have hitherto been cognizable in the Courts of Mal Adalat or Revenue Courts.

The Collectors of the revenue preside in these Courts as Judges and an appeal lie from their decision to the Board of Revenue, and from the decrees of that Board to the Governor General in Council in Department of Revenue.

The proprietors can never consider the privileges which have been conferred upon them as secure whilst the Revenue officers are vested with these judicial powers.

Exclusive of the objections arising to these Courts from their *irregular, summary and often exparte proceedings*, and from the Collectors being obliged to suspend the exercise of their judicial functions whenever they interfere with their financial duties, it is obvious that if the Regulation for assessing and collecting the public revenue are infringed the revenue-officers themselves must be the aggressors, and that individuals who have been wronged by them in one capacity can never hope to obtain redress from them in another. Their financial occupations equally disqualify them for administering the laws between the proprietors of land and their tenants.

Other security, therefore, must be given to landed property, and to the rights attached to it before the desired improvements in agriculture can be expected to be effected.

Government must divest itself of the power of infringing, in its executive capacity, the rights and privileges which, as exercising the legistative authority, it has conferred on the landholders. The revenue officers must be deprived of their judicial powers.

All financial claims of the public, when disputed under the Regulations, must be subjected to the cognizance of Courts of Judicature, superintended by Judges who, from their official situations and the nature of their

ments, shall not only be wholly uninterested in the result of their decisions, but bound to decide impartially between the public and the proprietors of land, and also between the latter and their tenants.

The Collectors of the Revenue must not only be divested of the power of deciding upon their own acts, but rendered amenable for them to the Courts of Judicature, and collect the public dues subject to a personal prosecution for every exaction exceeding the amount which they are authorized to demand on behalf of the public, and every deviation from the Regulations prescribed for the collection of it.

No power will then exist in the country by which the rights vested in the land holders by the Regulations can be infringed, or the value of the landed property affected.

Land, must in consequence, become the most desirable of all property, and the industry of the people will be directed to those improvements in agriculture which are as essential to their own welfare as to the prosperity of the State. (Preamble)

Summary of the Preamble.

Note—The Permanent Settlement was made with a view to give security to the land-holders in the enjoyment of their lands thereby giving an impetus to the improvement of agriculture in the country. But the benefits expected from the Permanent Settlement could not fully accrue so long as all questions between Government and land-holders respecting the assessment and collection of public revenue and of disputed claims between the landlords and their raiyats have to be decided in the *Mal Adalat* or Revenue Court of which the Collectors of the revenue were the presiding judges. The objections against these courts were that the proceedings of these courts were irregular, summary and often *exparte*, and that the Collectors had to suspend the exercise of their judicial functions whenever they interfered with their financial duties. Besides, if the Regulations for assessing and collecting the public revenue were infringed, the Revenue-officers themselves must be the aggressors and individuals wronged by them in one capacity could never hope to obtain redress from them in another. Their financial occupations equally disqualified them from adminis-

tering laws between proprietors of land and their tenants. It was therefore, resolved, to deprive the Revenue officers of their judicial powers by this Regulation. All financial claims of the public, when disputed under the Regulation, must henceforth be subject to the cognizance of the Courts of Judicature presided over by independent judges.

Bengal Revenue-free-lands Regulations.

(XIX & XXXVII OF 1793.)

What is the difference between Badshahi & Non-Badshahi lakhiraj grants? B. L. '13 (*b*). 1916(*b*),23(*a*), 21 (suppl.), 22 (*a*).

Introduction.—The Regulations of 1793 divide lakhiraj or revenue free grants into two classes (1) *Badshahi* and (2) *Non-Badshahi*. Badshahi grants were those made by the Sovereign for the support of pious or learned men or of religious or charitable institutions and the law applicable to those grants is contained in Reg. XXXVII of 1793. There are different varieties of *Badshahi Lakhiraj*, for instance (i) *Jaigirs* or grants to military officers and servants of the State in lieu of wages, (ii) *Altamga* or royal free-gift, (iii) *Aima* and *Madadmash*—grants for the support of learned and religious Mahomedans or of benevolent institutions, (iv) *Nazarat* grants for the support of *Masjids*.

Describe briefly how they were affected by the Regs. of 1793. B. L. 1920(*a*). *Give a short history of these two classes of grants and state how the British Govt. dealt with them by the Regs.?*

Regulation XXXVII of 1793 declared the validity of all *Badshahi* revenue free grants made previous the 12th of August, 1765, *provided the grantee* (a) *had obtained possession before that date and* (b) *had retained it since.* All grants made or confirmed since that date, except under the authority of Government, or its officers duly empowerd in this behalf, were held to be invalid.

What grants of lakhiraj lands are invalid acc.

Non-Badshahi lakhiraj grants were made by Zemindars and officers of Government appointed to superintend the collection of revenue, generally under the pretext that the produce of the lands was to be applied to religious or charitable uses. The law applicable to these grants is contained in Reg. XIX of 1793, under which such grants are divided into three classes, *viz.* (1) grants of lands

antecedent to the 12th August, 1765 (the date of the Company's accession to the Dewani); (2) grants posterior to 12th August 1765, but antecedent to the 1st December, 1790; (3) grants posterior to the 1st December 1790. With respect to the 1st class, all grants, by whatever authority made and whether in writing or not were declared valid if (i) the grantees had got possession and (ii) the land had not subsequently been charged with revenue. With respect to the *second class*, all grants which were not made or notified by the Government for the time being or by any officer duly empowered by it in this behalf were declared invalid. Grants made by the chief of the Provincial Council were held to be valid and so were grants of less than 10 *bighas*, the produce of which was *bonafide* appropriated for the endowment of temples or for the maintenance of Brahmins or other religious or charitable purposes, *provided* these latter grants were of date antecedent to the Bengali year 1178 or the Fussily or Wilaity 1179. Grants of the *second class* so declared invalid were subdivided into (a) grants exceeding 100 *bighas* and (b) grants not exceeding 100 *bighas*. The revenue assessable on the former was declared to be the property of Government and these grants when assessed were to become *independent taluks*, that is, their revenue was to be paid direct to Government and not through any Zemindar. The revenue assessable on grants of less than 100 bighas was made over by Government to proprietors of estates within which these grants were situated and they were authorized to levy rent from the lakhirajdar without being liable to pay any additional revenue. These grants were to become *dependent taluks*. The *third class* includes grants made since the 1st of December 1790, whether exceeding or not exceeding 100 bighas. These grants were in all cases declared null and void and having been *included* by the Settlement of 1793, within the limits of permanently settled estates, the proprietors of such estates were authorized and required to dispossess the grantees, annex the land to their estates and collect the rents thereof. They would not be liable to any increase of revenue on account of such grants being resumed by them. Lands included in the grants of the first two classes were expressly excluded from the Decennial and Permanent Settlements and the Government reserved the right

to Reg. XIX of 1793 ? B. L. 1904.
What is an invalid lakhiraj ? B. L. 1902.
What lands were exempted from payment of Government revenue by the British Govt. ? B. L. 1902.
What lakhiraj grants were re organised as valid under Regs. 19 and 37 of 1793 ? B. L. 1906, 1912 (*a*).
What lakhiraj grants were declared invalid and to whom were the lands covered by invalid grants assigned ? B. L. '13 (*a*).
What are Badshahi & Non-Badshahi grants? B.L. 1926(*b*).
To what extent did the British Govt. recognise the claims to hold land free from payment of revenue ? B.L. 1927(*a*).

to assess these grants for its own benefit. *Vide* Sec. 8 of Reg. I of 1792.

Non-Badshahi Lakhiraj Regulation.

(XIX OF 1793).

Circumstances that led to the passing of Reg. XIX of 1793.

What was the necessity for enacting Regulation XIX of 1793? B.L. '15 (*a*).

Why was Reg. XIX enacted?

What lakhiraj grants of land are declared valid by it? B.L. 1921(*b*).

What measures were taken for assestment on lands revenue free under invalid titles? B.L. '17 (*b*).

What lakhiraj grants were invalid and what valid under Reg. XIX of 1793? B.L. 1925(*a*).

What lakhiraj grants were declared valid Reg. XIX by of 1793? B. L. '14 (a),

Object and reasons of the Regulation.—By the ancient law of the country the ruling power is entitled to a certain proportion of the produce of every *bigha* of land demandable in money or kind according to local custom. From this it follows that if a Zemindar make a grant of any part of his lands to be held exempt from the payment of revenue, it would be void from being an alienation of the dues of Government without its sanction. It is obvious also that the revenue of Government would be liable to gradual diminution, if the validity of such grants were admitted.

But as a matter of fact, previous to the Company's accession to the *Dewani* numerous grant of this description were made not only by the Zemindars but by the officers of Government appointed to the temporary superintendence of the collection of revenue under the pretext that the produce of the lands was to be applied to religious or charitable uses. Of these grants, some were applied to the purposes for which they were professed to have been made, but in general they were given for the personal advantage of the grantee or with a view to the clandestine appropriation of the produce to the use of the grantor or sold to supply his private exigencies. In conformity to the principles which prevailed under native administration the British Government have at various times declared all grants for holding land exempt from the payment of revenue, made since the date of the Company's accession to the *Dewani*, without their sanction, illegal and void. But all such garnts made previous to that date were however held to the valid to the extent of the intentions of the grantor as ascertainable from the terms of the writings by which the grants might have been made or from their nature and denomination,

provided the grantees had obtained possession. But as there was no complete register of these exempted lands, many zemindars as well as the temporary farmers of the public revenue and the officers of Government to whom the collection of the revenue has been occasionally committed in consequence of the Zemindars refusing to pay the revenue demanded of them, have taken advantage of the situation and made grants of extensive tract of land to others, or in the names of their relations or dependents for their own use, dating the deeds for these alienations previous to the Company's accessions to the Dewani or procuring them to be registered in the *Zemindari* records as having been alienated prior to that period. Thus the Government was deprived of its just dues and the public revenue suffered heavily on account of the illegal alienations. With a view to faciliate the recovery of the public dues from lands held revenu-free under invalid grants and to prevent any similar alienation being hereafter made to the prejudice of the public revenue and to secure the rights of the grantees of valid grants, this Regulation (XIX of 1793) was passed. (S. 1)

1916(a), 1918 (b), '19(a), '23 (a) '23(b). *What claims to hold land free from the payment of revenue were recognised by the British Govt. and what was the method of settlement in cases in which such claims were disallowed?* B. L. 1920(*b*). Object of the Regulation.

The main objects of this Regulation thus are :—

(*a*) To try the validity of titles of persons holding, or claiming a right to hold, lands exempted from the payment of revenue to Government under non-Badsahi grants ; and

(*b*) To determine the amount of the annual assessment to be imposed on lands so held which may be adjudged or become liable to the payment of public revenue.

The (non-Badsahi) lakhiraj lands dealt with in this Regulation may be divided into the following three classes :—

I. Grants made previous to the 12th of August, 1765.

II. Grants made or confirmed since the 12th of August, 1765, and previous to the 1st Dec. 1790.

III. Grants made since 1st of December, 1790.

1. Grants made previous to 12th August, 1765.—(1) Grants for holding land exempt from the payment of revenue, made previous to the 12th August, 1765, (the date of the Company's accession to the *Dewani*) by whatever authority and whether by writing

Non-Badshahi grants made previous to 12th August 1765, valid, provided (*i*)

grantee obtained possession before that date and (*ii*) the land has not been subsequently made liable to payment of revenue.

or without a writing shall be deemed valid, *provided*, (1) the grantee actually and *bonafide* obtained possession of the land previous to the date above mentioned and (ii) the lands has not been subsequently rendered subject to the payment of revenue by the officers or order of Government.

Grants before that day of no validity if possession not obtained before that date or the land has since been subjected to payment of revenue.

(2) But if it is proved that the grantee did not obtain possession of the land previous to 12th August, 1765 *or* that he did obtain possession of it prior to that date, but it has been since subjected to the payment of revenue by the officers or the orders of Government the grant shall not be deemed valid.

Courts to refer to G.-G. in Council in their doubts as to authority of officer of Govt. who may have subjected land, granted before 12th August, 1765 to payment of revenue.

(3) In the event, however, of a claim being preferred by any person to hold land exempt from the payment of revenue under a grant made previous to 12th August, 1765 and of it being proved to the satisfaction of the Court in which the suit may be instituted or to which it may be appealed that the grantee held the land exempt from the payment of revenue previous to that date but that it was subjected to the payment of revenue posterior thereto by an officer of Government and the court entertains doubt as to the competency of such officer under the powers vested in him to subject the lands to the payment of revenue, the courts shall suspend its judgement and report the circumstance to the Governor-General in Council who shall determine whether such officer was or was not competent to subject the land to payment of revenue.

12 years limitation. Claims to hold exempted from revenue, lands that have paid revenue for 12 years not to be heard. Exception. Life grants.

No such claim, however, to hold exempt from the payment of revenue, land that may have been subjected to the payment of revenue for 12 years preceding the date on which the claim may be instituted, shall be heard by any Court, *unless the claimant can show good and sufficient cause for not having preferred the claim within 12 years.*

No person, not being the original

(4) But nothing in the preceding clauses is to be construed—(*a*) to empower the Courts to adjudge any person, not being the original grantee, entitled to hold exempt from the payment of revenue land now subject to the payment of revenue under a grant made previous to the Company's accession to the Dewani where the

writing for such grant expressly specify it to have been given for the life of the grantee only or (supposing no such specification to have been made in the writing or the writing not to be forthcoming or no writing to have been executed) where the grant from the nature and denomination of it is proved to be a life tenure only according to the ancient usages of the country; or (*b*) to entitle the heirs of any person now holding land exempt from the payment of public revenue under a grant previous to the *Dewani* to succeed to and hold such land exempt from the payment of revenue upon the death of the present possessor where the writing for such grant expressly specify it to have been given for the life of the grantee only or (where there is no such specification in the writing or the writing not to be forthcoming or no writing have been executed) unless from the nature and denomination of the grant it is proved to the satisfaction of the court to be hereditary according to the ancient usages of the country. But upon the death of the present possessor any such grant which is adjudged not hereditary under the above clause, *if it shall appear that one or more successions have taken place before the date of the Dewani*, the lands shall not be subjected to the payment of revenue without the sanction of the Governor-General in Council.

grantee, to hold exempt from the payment of revenue, lands now subject to the payment of revenue under grants for life made previous to the *Dewani*. Nor to entitle the heirs of persons now possessing exempted lands under life grants made previous to the *Dewani* to hold such lands exempt from the payment of revenue upon the death of the present possessor.

(5) The present possessors of land now exempt from the payment under such life grants made previous to the *Dewani* and declared by the preceding clause not to be hereditary are prohibited from selling or otherwise transferring them or mortgaging the revenue of them for a longer period than their own lives and all such transfers and mortgages are declared illegal and invalid. But if any such life-grants have been confirmed as hereditary tenures by Government or by the officers of Government empowered so to confirm them, they are not be liable to the payment of revenue on the death of the present possessor and are exempted from the other rules contained in this and the preceeding clauses.

Power reserved to the G.-G. in Council, of determining whether life grants, to which one or more successions have taken place prior to the date of the *Dewani* shall be subjected to the payment of revenue or not on the death of the present

If doubt shall arise in any Court as to the competency of the authority of any officer of Government to confirm any such life-grant as hereditary the Court is to

possessor. The present possessor of such life grants prohibited from transferring them or mortgaging the revenue of them beyond their own lives. Such life grants if confirmed by Govt. or its officers not to be subjected to the payment of revenue on the death of the present possessor.

suspend its judgment and report the circumstances to the Governor-General in Council who shall finally decide on the point. (S. 2).

II. Grants made since 12th August, 1765 and previous to 1st December, 1790 —(1) All grants for holding land exempt from the payment of revenue which may have been made since the 12th August, 1765 and previous to the 1st December, 1790 * by any other authority than that of Government or by any officer empowered to confirm them, are invalid.

All grants made or confirmed since the Dewani excepting by the authority of Govt. or its officers duly empowered declared invalid.

(2) If doubts shall be entertained by any Court as to the competency of the authority of any officer to confirm any such grants, the Court is to suspend its judgment and report the circumstances of the case to the Governor-General in Council, to whom a power is reserved of determining finally whether the officer possessed competent authority to confirm the grant or otherwise, and the Court upon receiving the determination of the Governor-General in Council shall decide accordingly.

(3) The rule contained in clause (1) is not to be considered to authorize the subjecting of the following lands to the payment of revenue namely :—

(i) Land held exempt from the payment of the revenue under grants made previous to the commencement of the Bengali year 1178† or the Fussily or Wallaity 1179 (according as the land may be situated in Bengal, Behar or Orissa) under the signature of the chiefs of the late Provincial Councils and the seals of the Council, agreeably to an authority vested in them by Government for granting land to be held exempt from the payment of revenue, the annual produce of which did not exceed Rs. 100.

Why was the year 1790 taken as one point of decision ? B.L. '15 (a).

* 1st December, 1790 corresponds to the 18th Agrahayan, 1197, Bengali era, the 10th Aughun, 1198, Fussilly, the 18th, Aughun, 1198, Wallaity. On the 1st December 1790 rules were passed by the G. G. in Council for trying the validity of the titles of persons holding or claiming a right to hold lands exempted from the payment of revenue under non-Badshahi grants and for determining the amount of annual assessment to be imposed on land so held which may be adjudged or become liable to the payment of public revenue. These rule were, with modification, re-enacted into Reg. XIX of 1793.

† English year 1771 A. D.

*(ii) Land held exempt from the payment of revenue under grants (whether for the life of the grantee or otherwise) made previous to commencement of the Bengali year, 1178 or the Fussily or Wallaity, 1179 (according as the land may be situated in Bengal, Behar or Orissa) where the quantity of land granted does not exceed 10 *bighas* and the produce of it is *bonafide* appropriated as an endowment on temples or to the maintenance of Brahmin or other religious or charitable purposes.

The rule in this clause is to extend also to all grants of land not exceeding 10 *bighas* made previous to the *Dewani* the produce of which may be now so appropriated. (S. 3)

Courts how to proceed in the event of their entertaining doubts of the authority of the officer to confirm the grant. Exception in favour of (*i*) grants made before 1771 by the chiefs of the Provincial Councils, and (*ii*) also of lands not exceeding 10 *bighas* granted before 1171 for religious or charitable purposes. Questions regarding proprietary rights in lands alienated before 1st Dec. 1790 adjudged liable to payment of revenue, to be determined in *Dewani Adalat* this Regulation with respect to such lands relating only to the revenue. *In the case of non-badshahi grants, all grants made or confirmed since the*

Scope of the Regulation—This Regulation, so far as regards lands alienated previous to the 1st December, 1790 respects only the question whether they are liable to the payment of revenue or not. Every dispute or claim regarding the proprietary rights in lands alienated previous to that date and which, in conformity, to this Regulation, may become subject to the payment of revenue, is to be considered as a matter of a private nature to be determined by the Court of Dewani Adalat in the event of any dispute or claim arising respecting it beween the grantee and the grantor or their respective heirs or successors. The grantees or the present poossessors until dispossessed by a decree of the *Dewani Adalat* are to be considered as proprietors of the land with the same right of property therein as is declared to be vested in proprietors of estates or dependent taluks (according as the land may exceed or be less than 100 *bighas*) subject to the payment of revenue and they are to execute engagements for the revenue, with which their lands may be declared chargeable, either to the Govt. or to the proprietor or farmer of the estate in which the lands may be situated or to the officer of Government (according as the revenue of the estate in which the land may be situated may be payable by the proprietor or a farmer or collected khas under the rule of the Decennial Settlement). If by the decision of *Dewani Adalat* the proprietary right in the land shall be transferred, the person succeeding thereto is in like manner to be responsible for the payment of the revenue assessed or chargeable thereon. (S. 4).

Dewani were declared to be invalid. Do you know of any exceptions? B. L. 1926(*b*). *What was the method of settlement on cases in which claims to hold revenue free grants were disallowed?* B.L. 1917(*a*), 1927 (*a*).

Assesment of resumed lakhiraj lands :—

(A) Rates of assessment.—(1) Where the grant may have been made before the Bengali year, 1178 or the Fussily or Willaity, 1179, the lands if declared liable to payment of revenue shall be assessed only with half the revenue payable by the malguzari lands in the country.

(2) Grants made subsequent to the aforesaid dates shall be assessed with the same revenue as payable by other lands under the Decennial Settlement. (S. 5).

Revenue assessable on land exceeding 100 *bighas* alienated prior to 1st Dec. 1790 declared to belong to Govt.

(B) To Whom the revenue assessed on lands under the Regulation to belong ?—The revenue assessable on land that may have been alienated previous to the 1st December, 1790, and which may be adjudged or become liable to the payment of revenue under this Regulation,—

(a) *if the land does not exceeds 100 bighas*—shall belong to the person responsible for the discharge of of the revenue of estate or dependent *talúk* in which the land may be situated, notwithstanding anything said in section 8, Reg. I of 1793 ; and shall not be liable to the payment of any additional revenue on that account and the land shall be considered a *dependent talúk*. (S. 6).

(b) *if the land exceeds 100 bigas*—the revenue shall belong to Governmeant and the land shall be considered as *independent talúk*. (S. 7). *

Rules for assesment under S. 7.—The amount of the revenue payable from the lands specified in S. 7 is to be adjusted according to the following rules :—

1. It grant made previous to 1771.—If the grant shall have been made previous to the Bengal year 1178 or the Fasl or Wallaiyati year 1179 (according as the lands may be situated in Bengal, Behar, or Orissa), the revenue to be paid to Government shall be equal to one-half of the annual produce of the land, calculated according to the rates at which other lands in the pargana of a similar description may be assessed.

* Ss. 1-7 only of this Regulation are included in the Syllabus for the Final B. L. Examination of the Calcutta University.

If any part of the land shall be uncultivated, the proprietor is to be required to bring it into cultivation, and to pay such rasad, or progressive increase, to be regulated with a reference to the reduced rate of the assessment on the cultivated land, as the Board of Revenue, with the sanction of the Governor-General in Council, may deem reasonable.

The produce of the land shall be ascertained by a survey and measurement, one-half of the expense attending which is to be defrayed by the proprietor, in the event of his agreeing to the jama required of him, and the other moiety by Government; or by such other mode of investigation as the Collector, with the sanction of the Board of Revenue, may judge advisable.

If the proprietor shall refuse to agree to the assessment the lands are to be let in farm or held khas under the rules prescribed in Regulation VIII, 1793.

If the proprietor shall agree to pay the revenue that may be required of him, the amount shall not be liable to any variation in future; but he and his heirs and successors shall hold the lands at such fixed revenue for ever.

(2) If grant made after 1771.—If the grant shall have been made subsequent to the Bengal year 1178, or to Fasli or Wallaiyati year 1179 (according as the lands may be situated in Bengal, Behar, or Orissa), the revenue or jama to be paid to Government from the land shall be assessed agreeably to the rules prescribed in Regulation VIII, 1793 for forming the settlement of estates paying revenue to Government, and the produce shall be ascertained, and the expense of the investigation defrayed, in the manner specified with regard to the lands in the preceding clause.

If the proprietor shall refuse to agree to the assessment, the lands are to be let in farm or held khas, under the rules for the Decennial Settlement.

If the proprietor shall agree to pay the revenue that may be required of him, the amount shall not be liable to any variation in future, but he and his heirs and successors shall hold the land at such fixed revenue for ever. (S. 8).

Rules for fixing revenue on lands specified in Sec. 6.—The rules in Sec. 8 above are to be held applicable to the lands

specified in Sec. 6, with this difference that the proprietor, farmer, dependent talukdar, or officer of Government to whom the revenue may be payable, shall ascertain the produce of the land without subjecting the grantee to any expense, and submit the accounts of it to the Collector, who shall fix the revenue to be paid from the lands in perpetuity, reporting the amount for the confirmation of the Board of Revenue, who are empowered in cases in which it shall appear to them proper, to increase or reduce the amount.

If the proprietor shall agree to pay the revenue required of him, he and his heirs and successors shall hold the lands as a dependent taluk, subject to the payment of such fixed revenue, for ever. (S. 9).

Grants made since 1st December 1790 declared null land void.

III. **Grants made since the 1st December 1790.**—All grants for holding land exempt from the payment of revenue, whether exceeding or under one hundred *bighas* that have been made since the 1st December, 1790 by any authority other than that of the Government are declared null and void and no length of possession shall be considered to give validity to any such grant, either with regard to the property in the soil or the rents of it. And every person who now possesses or may succeed to the proprietary right in any estate or dependent *talúk* or who now holds or may hereafter hold any estate or dependent *talúk* in farm of Government or of the proprietor or any other person, and every officer of Government appointed to make the collections from any estate or taluk held *khas*, is authorised to collect the rents from such lands at the rates of the *pargana*, nor shall any such proprietor, farmer, or dependent talukdar be liable to an increase of assessment on account of such grants, which he may resume and annul, during the term of the engagements that he may be under for the payment of the revenue of such estate or taluk when the grant may be so resumed and annulled. The managers of the estates of disqualified proprietors and of joint undivided estates are authorized to exercise on behalf of the proprietors the powers vested in proprietors by this section. (S. 10).

Proprietors concerned with two classes of Lakhiraj lands.—It will appear from what has been said before that proprietors, in the exercise of the resumption powers conferred on them by

law, are concerned with two classes of Non-Badshahi lakhiraj grants* viz.

I.—*Grants made previous to the 1st December, 1790 and not exceeding one hundred bighas,* the revenue of which (when adjudged invalid) was by S. 6. Reg. XIX of 1793, made over to the persons responsible for the discharge of the revenue of the estate within which the land included in such grants might be situate. It may be observed that the land included in such grants had been expressly *excluded* from the Decenninal and Permanant Settlements and therefore the gift of the revenue assessed on these grants to the proprietors of the estates was an act of liberality on the part of Government.

What powers of resumption were given to Govt. and proprietors under Regs. 19 and 37 of 1793? B. L. '15 (*a*).

The *ex-lakherajdar* was not to be *dispossessed*, but was to hold the land when subjected to the payment of revenue as a *dependent taluk*.

Who had the right to resume invalid grants of revenue-free lands made subsequent to the 1st Dec. 1790 and why? B. L. '16(*b*).

II.—*Grants made after the 1st December, 1790*, whether exceeding or not exceeding one hundred bighas, (unless made by the Governor General in Council) were in all cases null and void, and having been *included* within the limits of permanently settled estates, the proprietors of such estates were by S. 10, Reg. XIX of 1793, authorized and required to *dispossess* the grantees, annex the lands to their estates and collect the rents thereof: and this without making any application to a Court of Justice, or sending previous or subsequent notice of the dispossession to any officer of Government.

To whom were the lands covered by invalid grants assigned? B.L. 1913 (*i*).

With respect to the *first* class on the contrary, proprietors were expressly required by S. 11, Reg. XIX of 1793, to institute suits in the Courts of Dewani Adalat for the recovery of the revenue made over to them by Government and were declared liable to damages if they subjected the lands to the payment of revenue without first having obtained a judicial decree (Field).

The right to resume invalid lakhiraj lands situated within the permanently settled estates accrued to the Government or zemindar from the date of the Permanent Settlement, if the lakhiraj was in existence at that date or from the date on which lakhirajdar commenced to hold the lakhiraji land if it came into existence after the

Can any step, if so, what, be now taken by the Govt. or Zeminder to resume invalid lakhiraj grants? B. L. 1912(*b*).

* The revenue of all Badshahi grants and all Non-Badshahi grants other than the above, went, when resumed, to Government.

How are lakhiraj grants classified under Reg. XIX of 1793?
In what classes of invalid lakhiraj grants was the right of resumption conferred on private proprietors?
Under what circumstances can resumption-suits be now brought?
B.L. 1919(a).

Settlement. Previously, under Reg. II of 1805, the time-limit for bringing in suits for resumption of lakhiraj land was sixty years but under Act XIX of 1859, 12 years were fixed as the period of limitation for such suits. Consequently so far as invalid lakhiraj land held within the ambit of permanently settled estates are concerned, the right to resume the same has long been extinguished. But an auction-purchaser of an estate at a revenue sale always gets a new start and his suit for resumption of invalid lakhiraj lands within his estate in not barred by limitation if brought within 12 years of purchase.

How proprietors and farmers to recover revenue on land specified in Sec. 6.—Proprietors or farmers of land, or dependent talukdars, who may deem themselves entitled to the revenue of any land of the description of that specified in Sec. 6, situated in their respective estates, farms, or taluks, are to institute a suit for the recovery of it in the Court of Dewani Adalat.

Any proprietor or farmer of land, or dependent talukdar or other person, subjecting such lands to the payment of revenue, without having previously obtained a judicial decree for that purpose, shall be liable to be sued for damages by the parties injured.

Where estates or dependent taluqs may be held khas, the right of suing for the recovery of the revenue from the lands specified in Sec. 6 is to be considered as vested in the party to whom the collections from the estate or taluk may be payable.

If the estate or taluq be held khas by Government, the tashildar or other officer is to sue for the revenue chargeable on such lands in the room of the proprietor, but under the directions of the Collector. (S. 11).

Suits by or against Government.—The Collectors of the revenue are to defend all suits that may be instituted against Government by any individual claiming a right to hold lands exempt from the payment of public revenue, and such suits and the suits which the Board of Revenue may direct the Collector to institute are to be defended and prosecuted by the vakil of Government under the instructions of the Collector; and, in the event of Government being cast, either wholly or in part, or if the Collector shall be dissatisfied with the decree in any respect, all the rules contained

in Sec. 30, Reg. XIV, 1793, and the other sections in that Regulation respecting decisions given against a Collector in any Zilla Court, in suits instituted against him by any proprietor or farmer of land, for sums of money demanded or actually received by him as arrears of revenue, are to be held applicable to such decree, with this difference, that the suit, from the commencement of it, is to be defended or carried on at the expense of Government; and, in the event of the Board of Revenue not deeming it proper to order an appeal against the decision of the Zilla Court to be preferred to the Provincial Court of Appeal, or against the decision of the Provincial Court to the Sadar Dewani Adalat, in the event of their ordering the cause to be appealed to the Provincial Court, and of its being given against them therein, they are to report their reasons, in both cases, for not preferring the appeal to the Governor-General in Council, who will direct the cause to be appealed or not, in either case, as may appear to him proper. (S. 15).

Grants forged or altered in any respect or antedated, declared void—If it shall appear to any Court of Judicature during the course of a trial that a grant for land to be held exempt from the payment of revenue, dated prior to the 1st December 1790, has been forged, or that the name of the original grantee has been erased, and any other name substituted, or that any name not in the original grant has been inserted, or that the denomination of the tenure in the original grant has been erased or altered, or that the date of the grant has been changed, or that the grant has been antedated, the grant shall be adjudged null and void, as far as regards the exemption of the land from the payment revenue, and the land shall be subjected to the payment of revenue accordingly. (S. 17).

Transfer of grants.—Grants of land, which, from the terms of the grant or the nature of the tenure, are hereditary, and are declared valid by this Regulation, or which have been or may be confirmed by the British Government, or any of its officers possessing competent authority to confirm them, are declared transferable by gift, sale or otherwise; and all persons succeeding to such grants, by whatever mode, are required to register their names in

the office of the Collector within six months after they may succeed to the grant.

But all such purchases are to be considered as made at the risk of the purchaser ; and, in the event of the grant not proving to be hereditary, or not to have been made or confirmed by the British Government or its officers possessing competent authority, the transfer is not to preclude the land from being subjected to the payment of revenue under this Regulation. (S. 20).

Time for registry of grants.—All persons actually holding lands exempt from the payment of public revenue, whether exceeding or under one hundred bighas, in virtue of grants made previous to the 1st December 1790, and whether made or confirmed by the Government of the country for the time being or any other authority, shall be allowed one year from the date of the publication prescribed in the following section to register the required particulars respecting their grants in the office of the Collector of the revenue of the Zilla in which the lands may be situated.

Lands not registered within prescribed time assessable with revenue.—If any person in possession of any such grant of land now held exempt from the payment of revenue shall omit to register it by the time prescribed in the publication, together with as accurate a detail of the particulars thereby required as he may be able to furnish, the land included in the grant shall, by such omission, become subject to the payment of revenue, in the same manner as if it had been adjudged liable to the payment of revenue by a final decree of a Court of Judicature, and the Collector, if the land shall exceed one hundred bighas, shall proceed to assess the lands accordingly ; and, if it shall be under one hundred bighas, the party to whom the revenue of the land may be payable under Section 6 is empowered to assess the lands as therein directed.

The Governor-General in Council, however, reserves to himself the power of admitting any grant upon the register after the expiration of the prescribed time, in the event of the possessor of the land showing good and sufficient cause, to his satisfaction, for not having registered it within the limited period, and the Board of Revenue are to report to the Governor-General in Council every case in which persons who may have omitted to register their grants as re-

quired may appear to them entitled to have their grant admitted upon the register. (S. 26).

Grants not registered within prescribed period, &c., invalid.—After the expiration of the period limited for registering grants, all grants not registered within the prescribed time, and which may not be subsequently admitted on the register by the Governor-General in Council, are declared invalid, as far as regards the exemption from the payment of revenue, and the land shall be assessed with revenue as directed in Section 26. (S. 27).

Effect of registry of lands—It is expressly declared, however, that the registry of grants under this Regulation is not to be considered as an admission of the right of the person in whose name they may be registered to the property in the soil, or of his title to hold the lands exempt from the payment of revenue.

Any person will be at liberty to sue him in the Dewani Adalat for the former, and he will be liable to be sued for the recovery of the latter by the Collector, with the sanction of the Board of Revenue, in the event of it appearing to that Board that the lands are liable to the payment of revenue. (S. 28).

Rules respecting life-grants applicable to grants for a term.—All the rules in this Regulation respecting lands now held, or that may be claimed to be held, exempt from the payment of revenue, under life-grants made previous to the date of the Company's accession to the Dewani, are to be considered equally applicable to grants made previous to that date for a term only. (S. 47).

Saving of grants made or confirmed by late superintendents of the bazi-zamin daftar, and of badshahi grants.—No part of this Regulation is to be considered (i) to annul any grants for holding land exempt from the payment of revenue, made or confirmed by the late superintendents of the *bazi-zamin daftar* in Bengal, in virtue of the powers vested in them. (S. 48) or

(ii) to extend to *jagir*, *altamgha*, *madadmash*, *aima*, or other grants of land termed *badshahi* or royal, and held, or stated to be held, under a royal *farman*. The rules applicable to such grants are contained in Regulation XXXVII of 1793. (S. 49).

Badshahi Lakhiraj Regulation (XXXVII OF 1793). *

What was the necessity for enacting Reg. XXXVII of 1793? B. L. '15 (*a*).

1. Object and Reasons of the Regulation— By the ancient law of the country the ruling power is entitled to a certain portion of the produce of every *bigha* of land, unless it transfers its right thereto for a term or in perpetuity. As a necessary consequence of this law, every grant or alienation of Government's proportion of the produce of lands without its sanction is null and void. Had the validity of such grants or alienations been admitted, it is obvious that the public revenue would be liable to gradual diminution. But as a matter of fact under the native Government grants were occasionally made of the Government's share of the produce of lands for the support of the families of persons who had performed public services, for religious or charitable purposes, for maintaining troops and for other services. Such of these grants as were hereditary and were made before the date of the Company's accession to *Dewani* were recognised by the British Government *provided* the grantees had obtained possession previous to the aforesaid date, but those grants which were for life only were declared resumable on the death of the grantees. There being no complete register of these grants, many persons have retained possession of lands under fabricated or antedated grants or have succeeded to life-grants on the death of the original grantee without the sanction of Government.

With a view to resume the public dues from lands thus held under invalid grants as well as the revenue of all lands the grants for which might expire and also to secure quiet possession and enjoyment to those persons who hold lands under valid grants, this Regulation with the following rules was passed. (S. 1, Preamble).

Badshahi grants made previous to 12th August 1765, valid provided the

2. (1) *Altamgha, jagir, ayma, madadmash* or other *Badshahi* grants for holding land exempt from the payment of revenue, made previous to 12th August, 1765,

* Ss. 1-3 only of this Regulation are included in the Syllabus for the Final B. L. Examination of the Calcutta University.

(the date of the Company's accession to the *Dewani*) shall be deemed valid, provided (i) the grantee actually and *bonafide* obtained possession of the land so granted previous to that date, and (ii) the grant shall not have been subsequently resumed by the officers or under the orders of Government. If it be proved that the grantee did not obtain possession of the land so granted previous to the 12th August, 1765, or that he did obtain possession to it prior to that date, but that it has been since resumed by the officers or under the orders of the Government the grant shall *not* be deemed valid.

grantee (i) obtained possession before that date *and* (ii) has since held possession. Grants before the *Dewani* of no validity if possession was not obtained prior thereto or the grant has since been resumed by authority.

Object of the Regulation—The main objects of this Regulation are :—

(*a*) To try the validity of the titles of persons holding or claiming a right to hold, *Altagha*, *Jagirs* and other lands exempt from the payment of public revenue, under *Badshahi* or royal grants.

(*b*) To fix the amount of the public revenue to be assessed upon the lands, the grants for which may expire or be adjudged invalid.

Application of the Regulation—This Regulation has been declared to apply to the whole of Bengal, the Sonthal Perganas and West Jalpaiguri. The whole Regulation has been repealed in the territories to which the Assam Land and Revenue Regulation of 1886 extends.

Altamgha—Means "royal grants" so called from two Turkish words "red" and "seal", such grants having been formerly sealed with a red seal. An *Altamgha* was a royal grant in perpetuity to the grantee and his heirs. It was a transferable and rent-free tenure. An altamgha would now be an estate under S. 3. cl. (1) of the B. T. Act. (Guha, 412). "The *altamgha* grant was under the Emperor's red seal and was a grant of revenue of land under cultivation. This was not strictly perpetual but is said only to have reverted to the State on failure of heirs, or on forfeiture for misconduct. It was intended to be hereditary; and the *sunnud* contained generally an appeal by the sovereign to his successors to confirm his grant. It was apparently the only grant in the Mahomedan system which was originally

intended to be hereditary. Such grants were rare, and were chiefly found in Behar. The grant of the Dewany to the English purports to be an *altamgha*. The *altamgha* conveyed only the right to receive the revenue and the authority necessary for that purpose but did not transfer any proprietary right. As before mentioned, the grant was practically resumed on delinquency ; and the new grant sometimes mentioned the dismissal of the former holder. There is only one instance known of transfer of either this or the *muddudmash* rights in Mahomedan times ; but after 1773, such rights have been transferable." (Phillips' Land Tenures, 198-99).

What Badshahi lakhiraj grants were declared valid by Reg. XXXVII of 1793 ? B.L. 1900. 1902 1906 ; 1912 (*a*). *Describe the incidents of Altamgha, Jagir, Ayma and Mudad mash lands ?* B.L. '15 (*b*). *Explain Jagirs* B.L. 1914(*a*).

Jagir—The word *Jagir* is derived from *jah*, a place, and *geruftun*, to lay hold of. Jagirs were grants of lands to military officers and servants of the State in lieu of wages. When granted by the Emperor they were assignments not of the land but of the revenue. Jagirs were of two kinds :—(*a*) Conditional and (*b*) Unconditional. Conditional jagirs were granted generally to the principal servants of the Emperor in order to meet the expenses of a particular office ; and these were held only so long as the office was retained. Unconditional jagirs were independent of any office and were personal grants for the the maintenance of a dignitiy, a suitable number of attendants and the troops which the Mansubder or Jagirdar was bound to have in readiness. These were grants for life only. If the lands produced more than the Mansubder's allowance, which was always fixed, he was bound to account for the surplus. There were few jagirs in Bengal, but in Behar the number was considerable, (Field). A Jagir which consists of *revenue*-free land is an estate. A Jagir consisting of grant of *rent*-free land made by a proprietor or permanent tenure holder may be a service-tenure or an ordinary tenure or holding according as it falls under one or other of the definitions of these terms in the B. T. Act. (Guha, 425).

Ayma *or Aima*—were grants rent-free or at a quit rent to learned and religious Mahomedans or for Mahomedan religious and charitable uses, (Field). The *aimas* are tenures granted fot the purpose of clearing jungle or for other improvement free of rent or subject to small-rent for the first few years and assessable subsequently at fixed or progressive rates. (Guha, 411).

Ayma (or *aimma*, the plural of *imam*, a leader of the devotions

of a private assembly of Mahomedan worshippers) grants were grants made to *imams* by the Sovereign. When grants of the revenue merely they came within the class called *seyurghal*. But they were sometimes grants of land as well as revenue, or remissions of revenue on land already in the grantee's occupation, and then they came under the *milk*, *millik* or *maddud-mash*. Again they were sometimes grants of land at a reduced revenue, or a remission of part of the revenue upon land in the possession of the grantee, and then they were called *malgoozari aymas* or revenue-paying *aymas*. The lands included in grants of this kind were generally wastelands ; and it is said that *malgoozary aymas* were sometimes granted in order to bring waste into cultivation. The lands thus cultivated would become the cultivator's property and descend as such ; but the remission of revenue would not necessarily descend with them. Hence these grants were not at all hereditary but only some of them. The objects for which *ayma* grants were made were much more varied than is implied in the term *ayma*. They included grants to learned men, or for religious or charitable purposes, and some of them were in perpetuity. They were seldom of very great extent. (Phillips' Land Tenure, 206).

Madadmash— literally means "assisting subsistence." They were grants for the support of the learned and religious Mahomedans or of benevolent institutions. A *madadmash* grant was on condition of performing certain services ; or for the support of the grantees without services ; or for religious purposes. The grant was in term implying perpetuity and mentioning the heirs or children as included among the grantees, but the grant was in practice revocable at the will of the Sovereign. There is a conflict as to whether the grant was heritable notwithstanding that the terms used implied perpetuity and descent. Sir George Campbell says that the right, if not resumed, went to the heirs of the grantees, but it is contended by one writer that the terms of the grant, including the children of the immediate grantee amongst the objects of the grant must be taken to refer to a joint interest in the children with the parent. The land was sometimes included in this kind of grant ; and in all cases of such grants the land was either granted or was originally held by the grantee and since the land descended in the ordinary course, the

right to hold it free of revenue would naturally attend it until the expiration of the grant; so that practically it was an hereditary grant. (Phillip, 197).

Courts to refer to G. G. in Council, in the event of their entertaining doubts as to the authority of any officer of Govt. who may have resumed *Badshahi* grants of land made before the *Dewani*.

(2). In the event, however, of a claim being preferred by any person to hold a land exempt from the payment of revenue under a *Badshahi* grant made previous to the date of the Company's accession to the Dewani and on it being proved to the satisfaction of the Court in which the suit may be instituted in the first instance or to which it may be appealed, that the grantee held the land exempt from the payment of revenue previous to that date, but that it was subjected to the payment of revenue posterior thereto by an officer of Govt. and the Court shall entertain doubts* as to the competency of such officer under the powers vested in him to resume the grant and subject the lands to the payment of revenue, the Court shall suspend its judgment and report the circumstanes to the Governor General in Council * to whom a power is reserved of determining whether such officer was or was not competent to resume the grant and upon receiving the decision of the G G. in Council,* the Court is to decide accordingly.

Claims to hold exempt from revenue under Badshahi grants lands that have paid revenue for 12 years, not to be heard. Exception—Person not being the original grantee not to be entitled to hold exempt from the payment of revenue.

No such claim, however, to hold, exempt from the payment of revenue, land that may have been subjected to the payment of revenue for 12 years preceding the date on which the claim may be instituted, shall be heard by any Court, unless the claimant can show good and sufficient cause for not having preferred the claim to a competent authority within 12 years.

(3) But no part of the two preceding clauses is to be construed (i) to empower courts to adjudge any person, not being the original grantee, entitled to hold land exempt from the payment of revenue, under a *jagir* or other grants made previous to 12th August, 1765, where the grant expressly specify it to have been given for the life of grantee only or (if there be no such specification) where from the nature and denomination of the grant it apears to be a life tenure only according to the

* The word "Governor-General in Council" in this Regulation shall be read as if the words "Local Government" were substituted therefor (Act 1 of 1903).

ancient usages of the country ; or (ii) to entitle the heirs of any person now holding lands exempt from the payment of public revenue under a *jagir* or other *Badshahi* life grant made previous to 12th August, 1765 to succeed to and hold such land exempt from the payment of revenue upon the death of the present possessor where the grant expressly specifies it to have been given for the life of the grantee only or (supposing no such specification to have been made in the grant or the grant not to be forthcoming) where from the nature and denomination of the grant it appears to be a life grant only according to the ancient usages of the country.

Nor to entitle the heirs of persons now possessing exempted lands under life-grants made previous to the Dewani to hold such lands exempt from the payment of revenue upon the death of the present possessors.

(4) The present possessor of lands now held revenue-free under such life grants are prohibited from selling or otherwise transferring them or mortgaging their revenue for a longer period than their own lives and all such transfers and mortgages, if made, would be illegal and void. (S. 2)

The present possessors of such life grants prohibited from transferring them or mortgaging the revenue of them beyond their own lives.

3 (1) All *Badshahi* grants for holding land exempt from the payment of revenue, made since the 12th August, 1765, by any other authority than that of Govt and which may not have been confirmed by Govt. or by any officer empowered to confirm them are invalid.

All grants not made or confirmed since the *Dewani* by the authority of Govt. or its officers duly empowered declared invalid.

(2) If doubts shall be entertained by any Court as to the competency of any officer to confirm any such grant the Court is to suspend its judgment and report the circumstances of the case to the G.G. in Council to whom a power is reserved of determining finally whether the officer possessed competent authority to confirm the grant or otherwise ; and the Court, upon receiving the determination of the G. G. in Council, shall decide accordingly. (S. 3)

Courts how to proceed in the event of their entertaining doubts of the authority of the officer to confirm the grant.

4. It is to be understood that this Regulation respects only the Government proportion of the revenue arising from lands held or claimed to be held under badshahi grants, and whether Government is entitled to resume or retain such revenue or otherwise.

Every dispute or claim regarding the zemindari or proprietary right in lands included in any grant is to be considered as a matter of a private nature between the contending parties, and is to be determined in the Dewani Adalat. (S. 4).

Questions regarding proprietary right to be determined in Dewani Adalat.

5. When a jagir or other life-grant shall escheat to Government, the Collector is immediately to attach the revenue of the lands, and report the circumstance to the Board of Revenue who are to obtain the orders of the Governor-General in Council regarding the resumption of the grant. (S. 5).

Collectors to attach revenue of lands in escheated grants.

When any badshahi grant shall be resumed or expire or escheat to Government, the revenue to be paid to Government from the lands included in it shall be assessed, and the settlement made in perpetuity, agreeably to the rules for the Decennial Settlement contained in Regulation VIII, 1793, with the person possessing the zemindari or proprietary right in the lands, whoever he may be.

Assessment of lands included in resumed grants.

If the proprietor shall refuse to pay the jama demanded of him, the land shall be held khas or let in farm, as directed in that Regulation. (S. 6).

Suits agst. Government by persons claiming to hold lands paying revenue exempt from revenue under badshahi grants.

7. (1) Any person having a claim to hold lands paying revenue exempt from the payment of revenue under a badshahi grant must institute his claim against Government, who alone can be the defendant in such suits, in the Dewani Adalat of the zilla, in the same manner as in cases where individuals may claim a right to hold lands paying revenue exempt from the payment of revenue under grants not of the description of those termed badshahi, in virtue of Regulation XIX, 1793.

(2) The Collectors of the revenue are to defend all such suits as may be instituted against Government, and such suits, and the suits which the Board of Revenue may direct the Collector to institute, are to be defended or prosecuted by the vakil of Government under the instructions of the Collector.

(3) In the event of Government being cast, either wholly or in part, or if the Collector shall be dissatisfied with the decree in any respect, all the rules contained in section 30, Regulation XIV, 1793, and the other sections in that Regulation respecting decisions given against a Collector in any Zilla Court, in suits instituted against him by any proprietor or farmer of land for sums of money demanded or actually received by him as arrears of revenue, are to be held applicable to such decree, with this difference that the suit, from the commencement of it, is to be defended or carried on at the expense of Government, and, in the event of the Board of

Revenue not deeming it proper to order an appeal from the decision of the Zilla Court to be preferred to the Sadar Dewani Adalat, they are to report their reasons for not preferring the appeal to the Governor-General in Council, who will direct the cause to be appealed or not, in either case, as may appear to him proper. (S. 10)

Grants forged or altered in any respect or antedated declared void.

8. If it shall appear to any Court of Judicature, during the course of a trial, that a grant has been forged, or that the name of the original grantee has been erased, and any other name substituted, or that any name not in the original grant has been inserted, or that the denomination or the terms of the tenure in the original grant have been erased or altered, or that the date of the grant has been changed or that the grant has been antedated, the grant shall be adjudged null and void. (S. 12).

Transfer of grants.

9. *Altamgha*, *aima*, and *madadmash* grants are to be considered as hereditary tenures.

These and other grants, which, from the terms or nature of them, may be hereditary, and are declared valid by this Regulation, or which have been or may be confirmed by the British Government or any of its officers possessing competent authority to confirm them, are declared transferable by gift, sale, or otherwise, and all persons succeeding to such grants, by whatever mode, are required to register their names in the office of the Collector within six months after they may succeed to the grant.

But all such purchases are to be considered as made at the risk of the purchaser; and, in the event of the grant not proving to be hereditary, or not to have been made or confirmed by the British Government or its officers possessing competent authority, the transfer is not to preclude the land from being subjected to the payment of revenue under this Regulation.

Jagirs are to be considered as life-tenures only, and, with all other life-tenures, are to expire with the life of the grantee unless otherwise expressed in the grant. (S. 15).

Time for registry.

10. All persons actually holding lands exempt from the payment of the public revenue under badshahi grants, and whether made or confirmed by the Government of the country for the time being, or by whatever authority, shall be allowed one year, from the date of the publication prescribed in the following section, to

register the required particulars respecting their grants in the office of the Collector of the revenue of the zilla in which the lands are situated (S. 19).

11. If any person in possession of any such grant that may be now in force shall omit to register it by the time prescribed in the publication, together with as accurate a detail of the particulars thereby required as he may be able to furnish, the grant shall, by such omission, become subject to resumption, and the lands shall become liable to the payment of revenue to Government.

The Governor-General in Council, however, reserves to himself the power of admitting any grant upon the register after the expiration of the prescribed time, in the event of the possessor showing good and sufficient cause, to his satisfaction, for not having registered it within the limited period, and the Board of Revenue are to report to the Governor-General in Council every case in which persons who may have omitted to register their grants as required may appear to them entitled to have their grants admitted upon the register. (S. 21).

12. After the expiration of the period limited for registering grants, all grants not registered within the prescribed time, and which may not be subsequently admitted on the register by the Governor-General in Council, are declared forfeited, and the lands shall be assessed with revenue, agreeably to the rules prescribed for the Decennial Settlement. (S. 22).

13. It is expressly declared, however, that the registry of a grant under this Regulation is not to be considered as an admission of the right of the person in whose name it may be registered to the property in the soil, nor of the validity of his grant.

Any person will be at liberty to sue in the Dewani Adalat for the former, and he will be liable to be sued of the resumption of the grant by the Collector, with the sanction of the Board of Revenue, in the event of it appearing to that Board that the grant is invalid. (S. 23).

Regulation not to extend to grants not badshahi.

14. No part of this Regulation is to be considered to extend to lands held or stated to be held, exempt from the payment of public revenue under grants not being of the description of those termed badshahi or royal. The rules applicable to such grants are contained in Regulation XIX, 1793. (S. 42).

Bengal Alluvion and Diluvion Regulation :

(XI OF 1825.)

Premable.

1. Object and policy of the Regulation—In consequence of the frequent changes which take place in the channels of the principal rivers which intersect Bengal and of the shifting of the sands which lie in the beds of those rivers, *churs* or small islands are often thrown up by alluvion in the midst of the stream or near one of the banks and large portions of land are carried away by an encroachment of the river on one side, whilst accessions of lands are at the same time or in subsequent years gained by dereliction of the water on the opposite side ; similar instances of alluvion, encroachment and dereliction also sometimes occur in the sea coast which borders the southern and south-eastern limits of Bengal. The lands gained from the rivers or sea by means above-mentioned are a frequent source of contention and affray and although the law and custom of the country have established rules applicable to such cases, these rules not being generally known, the Courts of Justice have sometimes found it difficult to determine the rights of litigant parties claiming *churs* or other lands gained in the manner above described. With a view to remove this difficulty following rules have been enacted for the general information of the public as well as for the guidance of the Courts of Justice determining claims to lands gained by alluvion or by dereliction of river or the sea. (S. 1)

Channel, Bed & Bank—A Channel means "the hollow bed of the river where a stream of water runs." The bed of the river "that portion of its soil which is alternately covered and left bare as there may be an increase or diminution in the supply of water and which is adequate to contain it at its average and mean stage during the entire year, without reference to the extraordinary freshets of the winter or spring or the extreme droughts of the summer or autumn. The bed is covered by the river and is the space subsequent to the river over which it flows, between the banks. It is space between the banks occupied by the river at its fullest flow.

The bank is the border of the bed within which the river flows when in its fullest state naturally, that is to say, when not temporarily overflowed by extraordinary rain. The bank of a river is no part of the bed ; for the bank ends at the line to which the water rises at its highest flow.

State briefly the rules which are declared by Reg. XI of 1825 to be applicable to the determination of claims and disputes relating to lands gained by alluvion B. L. 1901. *What are the rules for determining title to newly formed lands?* B.L. 1913(z), 1908. *What do you understand by alluvion & diluvion? To what extent does established usage govern claims to alluviated land?* B. L. '11(b).

Encroachment—Encroachment by a river upon the adjacent bank may be *sudden* or *gradual*. The effect of a sudden encroachment is submergence of riparian lands, which is called *Inundatio*, according to Roman Law. According to Roman Jurists *Inundatio* produces no jural change. Justinian says : "The case is quite different if any one's land is completely inundated, for the inundation does not alter the nature of the land, and therefore, if the water recedes, the land remains indisputably the property of the same owner." In England also the law seems to be the same. Lord Hale in his De Jure Maris observes. "If a subject hath land adjoining the sea, and the violence of the sea swallow it up, but so that yet there be reasonable marks to continue the notice of it, or though the marks be defaced, yet if by situation and extent of quantity, and bounding upon the firm land, the same can be known, though the sea leave this land again, or it be by art or industry regained the subject does not loss his property." In India it has been held that a *sudden* encroachment by a river upon the riparian levels does not alter the ownership of the land on the banks, in the absence of evidence showing an intention to abandon the land on the part of the riparian owner. (4 M. I. A. 403 ; 42 Cal. 489 : 13 M. I. A. 467 ; 27 Cal. 768).

2. Claims and disputes relative to alluvial lands to be decided by immemorial and definite usage, when clearly recognised and established : —Whenever any *clear and definite* usage of *shikast paiwast* respecting the disjunction and junction of land by the encroachment or recess of a river may have been *immemorially established* for determining the rights of the proprietors of two or more continuous estates divided by a river (such as that the main channel of the river dividing the estates shall be the constant boundary between them whatever changes may taken place in the course of the river by encroachment on one side and

accession on the other) the usage so established shall govern the decision of all claims and disputes relative to alluvial land between the parties whose estates may be liable to such usage. (S. 2)

Note.—This section says that claims and disputes as to alluvial lands are to be decided by usage when clearly recognised and established. One instance of the usages referred to is this that the main channel of a river dividing two or more contiguous estates shall be the constant boundary between them, whatever changes may take place in the course of the river by encroachment on one side and accession on the other. It would not matter whether the change of the course of the river be gradual or sudden. If the custom or usage is established, no question of an encroachment being gradual and imperceptible arises in a case to be governed by this section. So the case, as a result of the establishment of the custom, is taken out of the ordinary law of alluvion and diluvion and has to be decided by a rule of custom immemorially established (Ghose).

Custom to be a local custom.

The usage must be a *local* usage : the burden to prove it lies upon the person setting up and relying upon such usage. A custom obtaining on the bank of the Gogra affords no evidence that a similar custom exists at a place on the banks of the Ganges. The usage must be also *clear, definite* and *immemorially established* (13 M. I. A. 1).

What is Shikast and paiwast ? B. L. 1902.

Shikast paiwast—*Shikast* (literally, broken) applies to land lost by diluvion. *Paiwast* (lit., joined) united, applies to land gained by alluvion.

3 Where no such local usage the claim how to be decided:—Where there may be no local usage of the nature referred to above all claims and disputes relative to lands gained by alluvion or by dereliction either of a river or the sea shall be decided by the following rules : (S. 3)

Lands gained by alluvion.....the sea :—"Lands gained by alluvion" means accessions, additions or increases, of lands to the firm land by alluvial processes. "Lands gained by dereliction of a river or the sea" means lands left dry, bare or uncovered by the sudden or gradual retreat of the waters thereof.

Alluvion :—(Latin *Alluere*—to wash to, or on, *ad* and *luere*—*lavare*, to wash) literally means land gained from a river or the sea by the washing up of sand and earth. Alluvion comes from *Alluvio* meaning an imperceptible and gradual deposit of land from a river or the sea (*incrementum latens*). Alluvion may be defined as an addition to riparian land gradually and imperceptibly made by the waters to which the land is contiguous. "Alluvion, is an imperceptible increase ; and that is added by alluvion which is added so gradually that no one can perceive how much is added at any one moment of time. The deposit of earth gradually formed by alluvion upon the bank of river is inseparable from the native soil of the bank and the owner of the latter acquires the former by right of accession." (Justinian) Alluvion is the addition made to land by the washing of the sea or rivers ; and the characteristic of alluvion is its slow, gradual and imperceptible increase, so that it cannot be perceived how much is added in each moment of time. The test as to what is gradual and imperceptible is that though the witness may see from time to time that progress has been made, they could not perceive it while the progress was going on" (Angell).

Diluvion (Latin *di*, away, from, *luere*, to wash) means the submersion or the washing away of the surface soil by a river or the sea. The word has not been used anywhere in the body of the Regulation.

Dereliction—The word "dereliction" is generally used to denote a *sudden* and perceptible retreat of the sea or a river and the expression "derelict land" more often means land left bare and uncovered by water by such sudden and perceptible retreat of the river or the sea. "When we speak of derelict land we intend thereby land suddenly and by evident marks and bounds left and become dry (Hale). There is a distinction between lands derelict and lands formed by alluvion, the distinction being founded on the principle that alluvion must be *gradual* and *imperceptible*, but the dereliction of land by the sea or the river is frequently sudden, leaving at once large tracts of its bottom uncovered and dry and fit for ordinary purposes for which land is used. As to ownership of the *derelict* land, that is to say, the land left uncovered by a sudden retreat of

a river or the sea, it is almost settled in England that derelict land properly so called, belongs to the Crown, *prima facie*; but if such land when covered by the sea or river were in the ownership of the subject it would remain in such ownership after the dereliction. The law as to derelict land is laid down by Blackstone in these words :—"As to lands gained from the sea or river by *alluvion i. e.* by the washing up of sand or earth, so that in time to make *terra firma*; or by dereliction as when the sea shrinks back below the usual water-mark, in these cases the law is held to be that if this gain be little by little, by small imperceptible degrees, it shall go to the owner of the land adjoining, for *de mininus non curat lex* (diminutives are not noticed by law); but if the alluvion or dereliction be sudden and considerable the land shall go to the King, as Lord of the sea." Dereliction of a river or the sea, may be either *sudden* or *gradual*. In India in cases of sudden dereliction, there will be no change in the ownership of the derelict land. Hence it follows that the bed of a navigable river or the sea which, in this country, *prima facie* belongs to the Government will continue to be part of the public territory, when such land becomes dried up in consequence of the sudden dereliction of the waters thereof, and that the bed of navigable river, to the soil of which an ownership has been acquired by a private individual and the bed of non-navigable rivers will continue to be private property, when such bed becomes dried up by reason of the same cause. As to ownership of land gained by *gradual* dereliction of the water of a river or the sea, the result will practically be the same as in cases of land gained by alluvion, for there is hardly any difference in the result between *alluvion* and *dereliction*, if dereliction be *gradual and imperceptible* in the same way as *alluvion*.

Who is entitled to land gained by gradual accession by the recession of a public navigable river ?

(1) Land gained by gradual accession from the recess of a river or the sea, to be considered an increment to the tenure of the person to whose estate it may be annexed.—When land may be gained by *gradual* accession from the recess af a river or the sea *, it shall be considered an increment

* This Regulation applies only to land gained by gradual accession from the recession of a *river* or the *sea*. It does not apply to accretions gained from the recess of a *bheel* or lake. (4 C. W. N. 508). B. L. 1926(*a*).

to the tenure of the person to whose land or estate, it is annexed, whether such land or estate be held immediately from Government by a *Zemindar* or other superior landholder or as a subordinate tenure by any description of under-tenant whatever.

Nature and extent of interest acquired in the increment to be same as that possessed in tenure to which accession takes place. If the increment be to a Zemindari tenure, the Zemindar shall not be exempt from the payment of revenue to Govt. to which it may be liable under the law. If the increment be to a subordinate tenure, the under tenants, if liable by law, usage or engagement to an increase of rent shall not be exempt from the payment of such increase of rent.

Provided that a) the increment of land thus obtained (i) shall not entitle the person in possession of the estate or tenure to which the land may be annexed to a right of property or permanent interest therein beyond that possessed by him in the estate or tenure to which the land may be annexed, and (ii) shall not in any case be understood to exempt the holder of it from the payment to Government of any assessment for the public revenue, to which it may be liable under the provision of any Regulation in the force, (b) nor if annexed to a subordinate tenure held under a superior landholder, shall the under-tenant, whether a *khudkast* raiyat holding a *maurasi istimrari* tenure at a fixed rate of rent per *bigha* or any other description of under-tenant liable by his engagements or by established usage to an increase of rent for the land annexed to his tenure by alluvion, be considered exempt from the payment of any increase of rent to which he may be justly liable. (S. 4, cl. 1).

Note—The rule contained in this clause corresponds closely to the doctrine of *incrementum latens* which means an accretion formed by a process so slow and gradual as to be *latent* and imperceptible in its progress.

Gained by gradual accession.—In order to come within this clause, the land must be *gained* by *gradual accession*, by gradual, slow and imperceptible means. "Where there is an acquisition of land from the sea or a river by a gradual, slow and imperceptible means, there from the supposed necessity of the case and the difficulty of having to determine year by year to whom an inch or a foot or a yard belongs, the accretion by alluvion is held to belong to the owner of the adjoining lands" (*Per* James, L. J. in *Lopez* v. *Madan Mohan Thakur* 5 B. L. R. 521). Alluvion is an imperceptible increase and that is added by alluvion, which is added so gradually that no one can perceive how much is added at any one moment of time (Justinian). "The accumulations and increments, which

form themselves successively and imperceptibly against the riparian lands of a river or stream, are called alluvion. (Code Napolean).

The law on this subject is based upon the impossibility of identifying from day to day small additions to, or substractions, from land caused by the constant action of running water. "The whole doctrine of accretion is based upon the theory that from day to day, week to week, and month to month a man cannot see where his old line of boundary was by reason of the gradual and impeceptible accretion of alluvion to his land. Consequently, although after a certain period we may say that a body of land, however considerable, has accreted to the original land, yet if the steps by which that land formed are steps gradual and in the ordinary course of nature and happening from time to time, we cannot perceive the change from step to step." The only rational rule which we can adopt under such circumstances is, that the land so gradually and imperceptibly accreted does belong to the owner of the original, and he is entitled to possession of it as his property." (*Per* Mukherjee J. in 14 C. W. N. 681, 684).

When land is gained by gradual accession from recess of a public navigable river who is entitled to it and what is the extent of the interest of the person entitled to the increment ? C. U. '14(a), 1918 (b), 1924 (a).

State briefly the law of Accretion and the law of Reformation. C. U. 1904.

Gained—Land *gained* within the meaning of the clause does not mean land washed away, and afterwards identified as having reformed on an old recognized site. "The word 'gained' in cl. 1 of sec. 4, Regulation XI of 1825 does not extend to cases of land washed away and afterwards reformed upon the old site which can be clearly recognised" (1864 Suth, W. R. p. 45). Clause 1, Sec. 4. applies only to cases of land *gained*, that is to say, formed upon a site which can not be recognised as that of any former proprietor. Lands washed away and afterwards re-formed on an old site which could be clearly recognised, are not land, *gained* within the meaning of cl. 1, S. 4 of Reg. XI of 1825. (13 M. I. A. 467 ; 17 Cal. 570).

State the law of gradual and imperceptible accretion as laid down in Reg. XI of 1825. Is there any exception to the law ? What is the reason of the law, and of the exception ? B. L. 1919 (a) & (*b*).

Land which is washed away and which reappears afterwards on the old ascertained site is not land gained by accession within the meaning of the Regulation and such lands continues to be the property of the original owner, unless his title to it after such reappearance is extinguished by adverse possession over 12 years on the part of *trespasser*. (1 C. L. J. 371)

Accession:—The word "accession" comes from the Latin word *accessio* which means an increase or addition to something previously

State the law laid down in

Reg. XI of 1825 about acquisition of land by gradual accession from the recess a river. B. L. '10 (b), 1916 (*a*).

belonging to an owner; but commentators have used the word *accessio* not only for the increase itself but also for the mode in which the increase becomes one's property. *Accessio* is a general name given by the Roman jurists to the natural mode of acquisition of ownership by which the owner of the principal becomes, by virtue of such ownership alone, owner also of the accessory, as for instance the produce of an owner's animals, and fruits of his land belong to him."

[**Problem.** A chur is formed in the big river Padma, the banks of which belong to A and B. The river begins to shift its course towards the north and chur and A's lands are washed away. Subsequently the river shifts its course towards the south and the reformation proceeds in the direction of the old chur until A's land and the old chur form one contiguous tract of land and the whole bed of the old river becomes dry. Who will get the dried up river bed? **B. L. 1913 (a).** Ans. A—See Cl. 1, S. 4]

Explain the rules relating to the rights of riparian owners to land gained by the recession of public navigable river. B. L. '17 (a), '21 (Suppl.) '22 (a).

Who is entitled to accreted land? A *lakhirajdar* has a right to gradual accretions to his *lakhiraj* property, there being nothing in Reg. XI of 1825 to deprive him of such right, but he must pay rent for the accreted land. (18 C. W. N. 1206) The word used in the section is "tenure" and it does not say whether such tenure should be *khiraj* (rent-paying) or lakhiraj (rent-free), so that it has been held that a *lakhirajdar* is entitled to the accretion to his tenure within the meaning of cl. 1, S. 4. In *Ramnoni Gupto* v. *Umesh Chandra Nag* (1858 Beng. Sad. D. R. 1836) it was contended on behalf of the plaintiff-*patnidar* against the defendant *lakhirajdar* that any addition from accretion must be an addition to the general estate and not to the rent-free lands of lakhirajdar. The majority of the Judges in over-ruling this contention, observed "it appears manifest to us that this argument, regarding the inability of the *lakhirajdar* to acquire more lands, because his tenure is situated confessedly within the limits of a permanently settled estate, is opposed to the policy of the law of alluvion as declared by Reg. XI of 1825. That law clearly recognises the ability of under-tenants of an estate to acquire land which may be annexed to their under-tenures, and those under-tenures must be included within the limits of the superior estates there is manifestly no-

Discuss whether a rent-free tenure-holder is liable to pay rent in respect of lands accreted to his rent-free tenure in a case where he claims exemption on the ground

intention in the law to draw any such distinction as that advanced by the pleader. The law plainly declares that alluvial lands shall be considered an increment to the *tenure* of the person to whose land or estate it is annexed with a proviso that such land shall in every case be liable for the assessment of any public revenue." This decision was followed in the case of *Putheram Chowdhury* v. *Kuthenarain Chowdhury* (1 Suth. W. R. 124) where it was held that under Regulation XI of 1825, gradual accretions belong to the party to whose tenure they may be attached, and that there is nothing in the law to deprive a *lakhirajdar* of this right if the tennure be a *lakhiraj* one. In the case of *Rajendra Nath Roy* v. *Nandalal Guha* (18 C. W. N. 1206) it has been decided that the holder of a rent-free tenure is liable to pay rent in respect of the accreted land.

that the parent tenure is held rent-free by him. B. L. 1919(b).

If land accretes to the holding of an occupancy raiyat, who is entitled to it, the land lord or the tenant ? B. L. 1906.

An occupancy raiyat is entitled to the benefit of S. 4 of Reg. XI of 1825 and when there is an accretion to his holding he is entitled to hold the land as an accretion to his jote subject to payment of increased rent on account of the accretion and the Zemindar cannot take them away and settle them with other parties. (15 W. R. 149 ; 6 C. L. R. 362, 15 W. R. 87 ; 21 Cal. 233). A non-occupancy raiyat also can claim the benefit of Sec. 4 of Reg. XI of 1825 and is entitled to hold the lands accreting to his holding. (18 C. W. N. 267, 14 C. W. N. 680, 8 C. L. J. 541). But a tenant from year to year is not entitled to the benefit of the Section (4 W. R. 57 : 33 Cal. 444). * *In Bhagat Prisad Sinha* and *Durga Bejoy Sinha* (8 B. L. R. 73) the Court seemed to think that even a tenant at will, as long as he remained in possession of his holding, would be entitled to any accretion thereto. See also *Narainbas Bepary* v. *Sootal Bepary* (1 W R. 113).

Can any occupancy raiyat or a tenant at will lay any claim to land gained by alluvion ? B. L. '14 (a).

The right of an *ijaradar* or other lessee to the alluvial accretions to his lease has been established by Sec. 108, cl. (b) of the Transfer of Property Act which runs thus :—"If during the continuance of the lease, any accession is made to the property,

* "It seems to us quite clear that cl. 1., S. 4. of Reg. X of 1825 refers only to under-tenants intermediate between the zemindar and ryot and to khoodkast or other ryot who may by the nature of the tenure and by engagement possess some permanent interest in their lands, and not to tenants merely from year to year" (Trevor and Campbell, J. J.).

such accession (subject to the law relating to alluvion for the time being in force) shall be deemed to be comprised in the lease." The right of a *putnider* to the accretion to his putni holding has been established in the case of *Mukta Keshi Debya v. The Collector of Burdwan* (12 W. R, 204).

The right of a tenure holder to the accretion to his tenure as against the Zemindar was established in the case of *Suste Ojha* v. *Beechuk Ojha* (1859, Sud. D. R. 1617) where it has been held that the Zemindar is bound to settle with the mukarari tenure-holder the land which accretes to such tenure under cl. 1, of Sec. 4 of Reg. XI of 1825.

That a mortgagee is also a person who is entitled to any alluvial accretion to the mortgaged property has been declared by S. 70 of the Transfer of Property Act.

[**Problem** :—A is the owner of a piece of *lakhiraj* land to which some *chur* lands accrete. A has never been in possession of these accreted lands. C, a raiyat, under a bonafide settlement of the accreted land from the *patnidar* of the village, has been in long possession thereof. A now brings a suit against C the raiyat and the *patnidar* for a declaration of his *lakhiraj* title to the accreted lands and for recovery of *khas* possession of the same. State your decision. B. L. 1915 (a)]

Accretions by alluvion or by dereliction are sometimes formed in the front of the lands of two or more riparian owners. It has been held in such cases that they are each entitled to the accretion, in proportion to their share in the parent estate.

Reformation in situ.

Scope of the rule—There is nothing to show that this rule contemplates land other than that which commonly falls within the definition of "alluvion" *viz.* land gained by gradual and imperceptible accretion, the *incrementum latens* of the civil law. No express provision is made for the case of land which has been lost to the original proprietors by the encroachment of the sea or a river and which, after diluviation, reappears on the recession of the sea or river ; but on the other hand there is nothing to take or destroy the right of original proprietor in such a case which must therefore be determined by the general principles of equity and justice under the 5th rule." (10 B. L. R. 406).

This clause refers to cases of *gain* and not of confiscation of another's property. In truth what this Regulation contemplates is the gain which an individual proprietor may make from what is a *public* property, such as a river or sea belonging to the State and not any gain from what is *private* property.

What are the rights of riparian proprietors and tenure holders in respect of land gained by alluvion or lost by diluvion? Does it make any difference if the bed of the river belongs to a private party? C. U. '13 (b).

Where the riparian land belongs to one proprietor and the river with the bed is owned by another private individual either as a part of his estate or otherwise, the right of the owner of the river and bed will prevail over that of the owner of the bank to which the accretion may be annexed; and consequently the accretion in such a case will belong to the owner of the bed as being a vertical accretion to such bed as against the owner of the bank who may claim it by right of longitudinal accretion to his land. The principle of law that is involved in such cases is the same as is applicable to the cases of reformation *in situ*. If such rivers which are private property, be non-navigable or "small and shallow" as contemplated by cl. 4 of S. 4 of the Regulation there is hardly any difficulty in maintaining that the accretions to the bank of such rivers are not the property of the riparian owner, but belong to the owner of the river bed, if they be different persons. (26 Ind, Cas. 406; 4 W. R. 54). But if those rivers which are private property be navigable, that is to say, subject to the public right of navigation, a somewhat difficult question arises relating to the ownership of the accretion to the riparian bank, when the owners of the bank and of the river bed would be different persons. The riparian owner may claim the accretion to his bank as having been gained from a navigable river, when the owner of the bed will resist it on the ground that the river being his private property, the law of accretion, as stated in cl. 1, S. 4, does not apply and that ownership of the bed having been vested in him, all accretions thereto are vertical accretions to his river bed. The public may have a right of navigation over the waters upon his land, but the bed belongs to him, and the possession will be restored to him when the water retires permanently. It is true that in cl. 1, Sec. 4 there is nothing to indicate that that clause is not applicable to rivers which are private property, that is to say, in cases where the bed of a navigable river

belongs to a different proprietor. The trend of decisions seems however, to be that cl. 1, S. 4 of the Regulation does not apply to private rivers of the above kind. This is apparent from the following observations of their Lordships of the Judicial Committee in *Lopez* v. *Madan Mohon* (13 M. I. A. 467) :—"In truth, when the whole words are looked at not merely of that clause but of the whole Regulation, it is quite obvious that what the then Legislative authority was dealing with, was the *gain* which an individual proprietor might make in this way from that which was part of the public territory, the public domain not usable in the ordinary sense, that is to say, the sea belonging to the State, a public river belonging to the State; this was a gift to an individual whose estate lay upon the sea, a gift to him of that which by accretion became valuable and usable out of that which was in a state of nature neither valuable nor usable." These words evidently seem to imply that the bank which adjoins the bed of a navigable river owned by a private individual, will not attract the operation of this clause. (Ghose).

What is the extent of interest acquired by a person to lands formed in a public navigable river in front of his tenure? B. L. 1925(*a*).

Proviso—The first part of the Proviso deals with the extent of interest which a person entitled to an accretion acquires in respect of the accreted land. The Proviso says that the right or interest, which a person in possession of the estate or tenure to which the increment is annexed acquires in such increment, will not be more than what is possessed by him in the parent estate or tenure. That is to say, if he is an ijardar or a lessee in respect of the parent estate or tenure, his right or interest in the increment gained during the continuance of his ijara or lease cannot go beyond the term of his ijara or lease. If he is in possession of the parent estate or tenure as a mortgagee, his right or interest in the increment will cease when his claim is satisfied. In *Miajan v. Akram* (8 C. L, I. 541) Geidt. J. has held that the person to whose land the accretion is formed is entitled to hold the accreted land on the same terms as that by which the land to which it is an accretion is held.

If by the irruption of the waters of

(2) Land suddenly cut off by a river, without any gradual encroachment and joined to another estate without its identity being des-

troyed to remain property of its original owner.—But when a river (a) by a sudden change of its course breaks through and intersects an estate without any gradual encroachment or (b) by the violence of its stream separates a considerable piece of land from one estate and joins it to another estate *without destroying the identity and preventing the recognition of the land* * so removed, the lands so separated on being clearly recognised shall remain the property of its original owner (S 4, cl.2).

a river a new channel is formed in the land of a subject, the right to soil remains in the owner. Discuss. Does the rule apply to tidal or non-tidal rivers? B. L. '1924(*b*).

Note.—This is known as *avulsion* which is defined by Blackstone, to be "whereby, by the immediate and manifest power of a stream the soil is taken suddenly from one man's estate and carried to another." "If the violence of a river should bear away a portion of your land and unite it to that of your neighbour, it undoubtedly still continues yours." (Justinian) A forcible and sudden breaking away of land being an unusual phenomenon where there has been an accretion or accession of soil to a person's estate, the *prima facie* presumption of law is that such accretion has been made by *alluvion* and not not by *avulsion* and the *onus* is on the party claiming by avulsion of showing that such soil so joined has been suddenly severed from his own estate and been transferred to such other estate.

State shortly the rule laid down in Reg. XI of 1825 for determination of claims and disputes relating to the following case:—When a river by sudden change of course intersects an estate. B. L. '16 (a).

[**Problems.**—(1) Rampur and Gopalpur are two properties on two opposite sides of a navigable river. The whole of Rampur is gradually washed away and its site covered by the river, while the whole of the river bed adjoining Gopalpur gradually forms into a chur attached to Gopalpur. By another change, the whole of the chur so attached to Gopalpur is washed away and forms on the original site of Rampur and a part of the original river bed. What are the rights of the proprietors of Rampur and Gopalpur (*i*) when chur is gradually washed away and formed; (*ii*) when it is bodily washed away and placed *en block* in its new situation by a sudden act of nature? **B. L. 1913 (b).** (At first the *chur* belonged to Gopalpur under Cl. 1. S.4 and subsequently in case

* The real test that is to be kept in view to determine the application of this clause is the identity and recognition of the land. (See 27 Cal. 768).

(1) it belonged to Rampur, see Cl. 1, S. 4 ; in case (2) it belonged to Gopalpur—see Cl. 2, S. 4). (2) A big river flows between the estates of A and B. It suddenly changes its course, its old bed becomes dry and it intersects A's estate so that B's estate, the old river bed, and a portion of A's estate become one compact piece of land. Five years afterwards, the river returns to its old bed. How far will A's right be affected by the action of the river on the two occasions ? **B. L. 1903.** (*Ans.* A's right will not be affected. See Cl. 2. S. 4). (3) (a) A tidal navigable river cuts though the estate of A and detaches a large portion of it from that estate and attaches it to the estate of B. To whose estate the portion thus cut off belong ? (To A's estate. See Cl. 2, S. 4). (b) The river again shifts its course and leaves the former bed dry. To whom does the dry bed belong ? (To A : The dry bed being on the soil of A's estate will belong to A. See *Lopez v. Madan Thakur*). **B. L. 1916 (b).**]

An island is thrown up in a large public navigable river (the bed of which is not the property of an individual), both Govt. and the person whose estate is most contiguous to the island claim it ; how would you decide the dispute ? B. L. '23 (*a*).

(3) (*a*) **Churs or islands thrown up in a large and navigable river the channel between the islands and the shore not being fordable to be at the disposal of Govt ; but if fordable to whom they shall belong.**—When a *chur* or island is thrown up in a large navigable river (the bed of which is not the property of an individual) * or in the sea *if the channel of the river or sea between such island and shore be not fordable*—it shall according to established usage be at the disposal of the Government. (*b*) But if *the channel between such island and the shore be fordable at any season of the year*,—it shall be considered an accession to land, tenure or tenures of person or persons, whose estate or estates may be most contiguous to it, subject to the provisions of rule (1) above, with respect to increment of land by the gradual accession.

State the rule of law which governs the right to an island thrown up in a large

"**At the disposal of Government.**"—The words "at the disposal of Government" mean that the property in and absolute right of disposal of the same is vested in the Government and not

* This rule therefore does not apply to island in rivers, the bed of which is owned by private individuals. Title to such islands follows the ownership of the bed.

that the Government have merely a right to revenue. The Regulation does not say "shall belong to Government," but the Government may dispose of it. The Legislature throughout the Regulation is dealing with the right of property in newly formed lands and not merely providing for the right to assess revenue upon them. (Suth. Rep, 1864, Civ. Rule 73) *and navigable river.* B. L. 1902, 1910 (*a*), '18 (*b*), 14(*a*), 1916 (*a*).

Fordability at what point of time ?—The criterion for deciding whether Government or the riparian proprietor is entitled to a *chur* or island is the circumstances *at the time of its formation* and not the state of things at any subsequent period.. (6 C. L. R. 249). *Who is entitled to islands formed in the bed of public navigable river ?*

[**Problems.** (1) An island is thrown up in the midst of a large navigable river. At the time it was thrown up, it had unfordable water on all sides of it, but no one took possession of it at the time. In the cold weather of the following year, the channel between the island and one of the banks of the river became fordable and in the hot weather of the same year completely dried up, whereupon the proprietors of the Zemindari on that bank of the river took possession of the formation. Who has the right to the chur formation aforesaid ? **B. L. 1911 (b).** Ans.-Govt. B. L. 1925(*a*) & (*b*), 1926 (*a*).

(2) A chur is thrown up in a large and navigable river. When it first made its appearance as an island, it was surrounded by an unfordable river. The Govt. did not assert its right thereto. Afterwards the channel between it and the shore, became fordable at a certain point, opposite a portion of the shore belonging to B. A, a contiguous owner on the river side sued B, claiming a portion of the chur just opposite to his own land on the ground that subsequently the deep water between it and A's estate became shallow and fordable. Can A succeed ? Give reasons for your answer. **B. L. 1920 (a)].**

"Subject to the provisions of rule 1 etc."—There are two modes under Regulation XI of 1825 by which a man may become entitled to land gained by alluvion from river, *the bed of* which is not the property of *an individual*. First, where the land is gained by gradual accession by the recess of the river. In that case the land formed is an increment to the tenure of the person to whose land or estate it is annexed, and the person in possession of

the estate acquires a right of property in the increment co-extensive with the property which he has in the estate to which it is joined and the increment is liable to be assessed with the Government revenue (Cl. I of sec. 4). The second mode of acquisition is under Cl. 3, Sec. 4 when a chur or in island is thrown up in a large navigable river and the the channel between such chur or island and the shore is fordable at any season of the year. In that case, the accession is declared to be an accession to the land or tenure which is most continuous to it.

"Most contiguous"—This somewhat vague expression is intended to comprise only the estate with which the chur comes into contact, so to speak along the length of the fordable part of the channel.

Rights in the bed of rivers—Under the law of India, the ownership of the bed of a navigable river is vested *prima facie* in the Govt. as trustees for the public. The foreshore of a tidal navigable river belongs to Govt. (6 M. I. A. 267). When the river ceases to be navigable, the foreshore is the property of the riparian proprietors. The beds of small and shallow streams of rivers above the point where they cease to be navigable, *prima facie* belong to the riparian proprietors so far as the middle thread of the stream. The foreshore and bank of a non-navigable river belong to the riparian proprietors. Private riparian right may exist in a tidal navigable river subject to and controlled by the public right of navigation. They are same as riparian rights in non-navigable rivers. These rights are natural rights inherent in the riparian soil. The Government is the owner of soil of the sea within a distance of 3 miles around the coasts of British India. The soil of the beds of bays, gulfs and estuaries *prima facie* belong to Government (2 Bom. 19).

Who is entitled to churs thrown up in small shallow river?
I. L. 18 (*b*), 5 (*a*), 14(*b*), 4(a). 25(*b*) 6 (*a*).

(4) Claims to churs, etc. thrown up in small and shallow rivers how to be determined.—Churs or sand banks thrown up in small and shallow river, the beds of which with the *jalkar* (right of fishery) are private property, belong to the proprietor of the *bed* of the river, subject, however, to the provisions in clause 1 of this section. (S. 4, Cl. 4)

Note.—Cl. 1, S. 4, enacts that in rivers not small and shallow and in the beds of which the ownership of individuals have not been recognised but such ownership remains in the public, churs thrown up are an increment to the tenure of the riparian owner to whose land they are annexed. Cl. 4 on the other hand provides that in small and shallow rivers, the beds of which are private property, *churs* thrown up belong to the proprietor of the *bed* of the river. In the one case the ownership of the bed of the river carries with it the right to the accretion, in the other the riparian ownership does the same (4 w. R. 54). Where the bed of the river belong to one person while the jalkar or right of fishery belong to another, churs etc. thrown up in small and shallow rivers, the beds of which are private property, belong to the proprietors of the bed of the river and not to one who has mere jalkar.

(5) Disputes relative to land gained by alluvion or by dereliction of river or the sea not provided for, how to be adjusted.—In all other cases namely in all cases of claims and disputes respecting alluvial land, which are not specifically provided for by the above rules, the Court of Justice shall be guided (a) *by the established local usage*, if there be any applicable to the case or if not (b) by *general principles of equity and justice*. S. 4, Cl. 5).

Recapitulation—The first section of the Regulation—after specifying the subjects which called for legislation provides for the following cases *viz*: 1st, the throwing up of churs or small islands in the middle of the stream or near one of its banks; 2ndly, the carrying away of portions of land by an encroachment of the river on one side and accession of the land at the same time or in subsequent years gained by the dereliction on the sea-coast bordering the southern and the south-eastern limits of Bengal—enacts that the rules declared by the following sections shall have the force of law throughout the Presidency of Bengal. The 2nd section provides that local usage, wherever it exists, shall prevail. The 3rd section provides that where there is no local usage, the general rules declared in the 4th section shall be applied to the determination of all claims and disputes relating to lands gained

Reconcile, if you can, the law as laid down in cl. 1 and cl. 4, of S. 4 of Reg. XI of 1825. B. L. 12 (a).

State the leading provisions of Reg. XI of 1825. C. U. 1907. *What are the rules relating to*

rights to land gained by alluvion or by dereliction of a river or the sea? B. L., 1908, 1901.

by alluvion or by dereliction either of a river of the sea. The 4th section is divided into five clauses. The 1st clause deals with land gained by gradual accession (*i. e.* alluvion in the proper sense of the word) and provides that it shall be considered an increment to the tenure of the person to whose land or estate it is annexed, subject to the right of Govt. to assess additional revenue upon it. The 2nd clause provides that the former rule shall not be applicable to cases of sudden avulsion where the identity of the land is not destroyed, preserving in that case, the rights in the original owner. The 3rd clause makes a *chur* or island thrown up in a large navigable river (the bed of which is not the property of an individual) or in the sea the property of the Govt., if the channel between it and the shore be not fordable, but provides that, if such channel be fordable at any season of the year, the *chur* shall be considered an increment by alluvion to the tenure of the person whose estate is most contiguous to it and shall be subject to the provisions of the 1st clause. The 4th clause deals with *churs* in small rivers, the beds of which have been recognised as the property of individuals, giving them to the proprietor of the land of the river. And the 5th clause provides that in all cases of claims and disputes respecting lands gained by alluvion or by dereliction of a river or the sea, which are not specifically provided for by the foregoing rules, the court shall be guided by local usage, if any be established as applicable to the cases; and if not, by general principles of equity and justice.

Explain "accretion." Are the two principles of accretion & reformation in any case reconcilable or overlaping? Discuss the case of Lopez v. Madan Mohan with reference to these two doctrines. B.L. 1915(b).

Reformation in Situ—The above rules are subject to a very important proviso introduced by courts of justice in consonance with the general principles of equity and justice which the legislation requires them to follow (*Vide* clause fifth, Sec. 4). That proviso may be briefly summed up as follows:- Where an estate is gradually swallowed up by river or sea and it afterwards reappears on the old site and is capable of identification it is the property of the original owner and not an accretion to the estate to which it is attached, unless there has been an abandonment by the original owner.

Leading Case—*Lopez* v. *Madan Mohan Takur* (13 M. I. A. 467)—The Plff. Lopez had a big estate on the bank of the Ganges.

By gradual encroachment of the river, the whole of the estate was swallowed up by the river and the estate of the deft. became the boundary of the river. After several years, the water gradually receded and the land again became hard soil. The land has reformed on the ascertained site of the Piff's estate and is capable of identification. The Plff. claims it as his property. The Deft., on the other hand, claims it as a gradual accretion to his estate by virtue of S. 4 of Act XI of 1825. *Held* by the Privy Council that as the land had never been abandoned by the Plff. and as it was capable of identification, the Deft. could not claim it under the Regulation. Sec. 4 Cl. 1 of Reg. XI of 1825 provides that where land has been *gained* by gradual accession from the river or sea, it shall be considered an increment to the estate to which it is annexed. Now it is to be observed that this clause speaks only of *gain* and not of confiscation of another's property. The clause obviously refers to the gain which a private person may make from what is public property such as a river or sea belonging to the Crown ; and not to any gain from what was private property. A statute is not to be construed as taking away a man's property unless such an intention is clearly expressed. This case therefore, falls outside the provision of Cl. 1 of Sec. 4 of the Regulation and must be decided according to Cl. 5 by the rule of equity and justice. Now the rule of English law, which is based on a principle founded on universal law and justice is that if a piece of land is gradually swallowed up by the river and sea and is disgorged again, it becomes the property of the original owner, if it is capable of identification. It is not to be understood, however, that property absorbed by the river is under all circumstances and after any lapse of time to be recovered by the former owner when it reappears. It may well be that it may have been completely abandoned by the owner so as to become a part of the public river or sea and in such a case it may by alluvion attach to the estate of another. But in this case, the Plff. Lopez never abandoned the land. On the contrary he continued to pay Govt. revenue for the same and had the description and measurement of his submerged mouza recorded by the State. The land now having reappeared on the old site and being capable of identification, Lopez is clearly entitled to it.

State if the principle of law laid down in Lopez v. Madan applies to the bed of small and shallow streams ? B.L. 1912(*a*).

If an alluvial deposit in the bed of a public navigable river is an accretion to the property of one person and is at the same time a reformation on the identified site of property belonging to another, to whom does the ownership of the deposit belong ? B. L. 1900, 1906, 1908.

What is meant by reformation on old site ?

Who is entitled to reformed land when it is also accretion to the land of of an adjoining estate ? B. L. 1906, 1924(a), 1900, 1908.

What is reformation on old site ?

B. L. 1923(*a*), 1925(*a*) & (*b*). *Who is entitled to reformation on old site? State & discuss shortly the law laid down by the Privy Council in the case of Lopez V. Mautan Thakur.*

The principle is that if a subject hath land adjoining the sea, and the violence of the sea swallow it up, but so that there be reasonable marks to continue the notice of it; or though the marks be defaced, yet if by situation and extent of quantity and boundary of the firm land the same can be known or if it be by art or industry regained, the subject doth not lose his property. If it be freely left again by the reflex and recess of the sea, the owner may have his land as before if he can make out where and what it was, for he cannot lose his property of the soil, although it, for a time, becomes part of the sea and within the Admiral's jurisdiction while it so continued (Hale, De Jure Maris, p. 15). This principle is one not merely of English law nor a principle peculiar to any system of municipal law, but it is a principle founded on universal law and justice; that is to say that whoever has land, wherever it is, whatever may be the accident to which it has been exposed, whether it be a vineyard which is covered by lava or ashes from a volcano or a field covered by the sea or river, the ground, the site, the property remains in the original owner. This is called the doctrine of *reformation in situ* and it rests upon the proposition that in contemplation of law, land covered by waters is the same as land covered by crops. The ownership of lands submerged remains in the original owner, who is deemed to be in constructive possession thereof, *unless there has been an abandonment on his part*, and the land after reappearance becomes the property of the original owner inspite of Cl. 1., Sec. 4 of this Regulation. (6 Cal. 725; 14 W. R. 424) But the identity of the site must be established whether by ancient maps and document or by other evidence. (18 W. R. 113 P. C.) Abandonment of claim on the part of the original owner must be established by overt acts indicating such an intention, and cannot be presumed merely because the land was under water for sometime and there was then no reasonable chance of the land alluviating in the near future. (*Per* Mookherjee. J. in 3 C. L. J. 316).

B. L. 1918 (*b*) 1916 (a), 1914 (b), 1910(a) & (b), 1911 (a), 1921 (b), 1921 (suppl.) 1922 (b), 1923 (a), 1925(a) & (*b*). *What do you understand by the expression "reformation on old site"? Land belonging to A is diluviated by a public navigable river and is reformed on its original site accreting to B's land. Who is entitled to get it? Give reasons.*

B. L. 1923(b), 1926 (*a*).

[**Problems** :—(1) Criticise, in the light of the provisions of of Regulation XI of 1825, the following passage: "Mere submergence of land does not infer a relinquishment by the holder. On the other hand, if he wishes to retain his right to the submerged land on the mere off-chance of their being reformed *in situ* at

some future date he must continue to pay year by year the assessment or rent." **B. L. 1927 (a).**

(2) Land is reformed on its original site, which, before it was washed away by the river, has been part of a permanently settled estate belonging to A. The reformation is contiguous to another estate belonging to B and is an accretion thereto. Both A and B claim the land. How would you decide the case? **B. L. 1912 (b).** Ans.—The reformation belongs to A.—*See* above.

(3) A piece of land emerges after temporary submersion caused by the sudden and violent change in the course of a river. The land when it appears is found to be attached to the land of A, but before the diluvion it belonged to B. Both claim the land. How is the conflict of claims to be decided? **B. L. 1904.** See above.

(4) A is the owner of an estate on the banks of the Ganges. A definite portion of the estate was washed away by the sudden violence of the current. It remained under water for some time and in consequence of the recess of the water from natural causes, appeared on the opposite bank, in contiguity with the property of B. It was again gradually washed away by successive inundations, and the whole gradually reappeared on the site whence it was first carried away but in such a manner that a small part of it became attached to an accretion to the property of C in the neighbourhood of property of A. What should be the *ratio decidendi* (rule of decision) in determining the rival claims of A, B and C? **B. L. 1909.** See above.

(5) A village was submerged and again reformed on the old site. The proprietor of the permanently settled estate of which it had formed a part continued to pay Govt. revenue. The reformation forms an island and is surrounded by a channel which is not fordable. In the Govt. entitled to take possession of this newly formed island? Give reasons. **B. L. 1921 (a).** See above.]

Adverse possession of churs—Adverse possession of *churs* for 12 years will be a bar to suit for possession of such lands; nor is it a tenable contention that limitation begins to run only from the time that the lands are culturable. On the contrary adverse possession can commence directly the land is in existence and may

be evidenced by any proved act of ownership *e. g.* gathering brush-wood, reeds, etc. (7 W. R. 231.)

4. Nothing in the above rules shall be construed (*a*) to justify any encroachments by individuals on the beds or channels of navigable rivers, or (*b*) to prevent the Magistrates or any other officers of Government who may be duly empowered for that purpose, from removing obstacles (i) which appear to interfere with the safe and customary navigation of such rivers or (ii) which shall in any respects obstruct the passage of boats by *tracking* on the banks of such rivers, or otherwise.

Note :—This section seems to have been enacted in view of the supreme importance of preserving the public right of navigation unobstructed in navigable river. The Regulation lays down provisions by which the riparian owners on the banks of public navigable rivers become entitled to lands gained from such rivers : but, at the same time, it provides that such right would not entitle them to encroach upon the bed of such rivers or cause other obstructions to navigation. The section also imposes restrictions upon the owners of the banks of navigable rivers not to prevent the exercise of such rights on the riparian banks as the exigencies of the public right of navigation may require.

"Any encroachment by individual etc."—The word encroachment here means what is called *purpresture* in English law. A *purpresture* is an unauthorised erection in the bed of a navigable river by persons other than the owner of the soil. *Purprestures* are encroachments by making enclosures, quays, wharfs, piers, etc. in the soil the property of which is vested in the Crown. Encroachments on the beds of navigable rivers as contemplated by Sec. 5 are public nuisances within the meaning of Sec. 268 of the Indian Penal Code. But all encroachments upon the beds of navigable rivers are not nuisances ; such encroachments in order to be indictable must come within the four corners of Sec. 268 I. P. C. If evidence adduced in any case fails to bring the obstruction complained of within the definition of a public nuisance or under the provisions of Sec. 283 of the I. P. C. they would not be held illegal. In this respect the law of India differs from the law in England where an encroachment on the bed of a navigable river, owned

by the public is illegal *perse* whereas encroachment on such bed owned by a riparian owner must be shewn to be illegal by proving that such encroachment has interfered with the public or private right. But in this country, it would seem that the ownership of the bed of a public navigable river by an individual would not make any difference in the application of the law.

[**Problem.**—On the bank of a tidal navigable river a person owing land wishes to construct on the foreshore of his land an embankment projecting into the river beyond the low water mark. Can he do so under the law (a)when such embankment will obstruct the passage of boats tracking on the bank of the river ; (b) when it will not cause such obstruction ? **B. L. 1910 (a)**]

What is the law in India relating to towing paths on the bank of rivers ? B. L. 1912(a).

Right of towing on bank of navigable rivers—The last portion of Sec. 5 is that nothing in this Regulation shall be construed to prevent Zilla Magistrate or any other officers of Government who may be duly empowered for that purpose from removing obstacles which shall in any respect obstruct the passage of boats by towing on the bank of such rivers, or otherwise. Any obstruction that may be caused by the riparian owner to the right of passage over the bank of a navigable river for the purpose of towing vessels, may be removed by a Magistrate duly authorised on this behalf. By this provision, the Regulation evidently means to declare that the public will have the right of towage on the banks of a navigable river, an obstruction to which will be removed by a Magistrate acting under Chapter X of the Cr. P. Code. The Regulation thus recognises the right of *towage* on the banks of navigable rivers. In this respect the law declared by the Regulations is in conflict with the law of England, according to which the public navigating a river has no right to demand a towing* path along the *bank* though such right can be exercised on the *foreshore* by the public. (*Vide* Ghose's Law of Alluvion and Diluvion, Vol. II).

Discuss with reference to case-law whether a jalkar or exclusive right of fishery granted by the

Right of jalkar or fishery in tidal navigable river—The recent leading case on the subject is *Srinath Roy* vs. *Dinabandhu Sm* (42 Cal. 487 P. C.). The Appellants were proprietors of a several fishery * in a certain tidal navigable river in Eastern

* A several fishery is the right to take fish from waters flowing over land belonging to another.

Govt. in a tidal navigable river in Bengal, extends to all tidal navigable rivers formed by the river; whether by a gradual change of course or by a sudden irruption.
B. L. 1926(a).
A right of fishery follows the river, whatever course it may take." Explain and illustrate.
B. L. 1920(*b*).
"What is meant by a several fishery? The fish follows the river and the fisherman follows the fish." Illustrate this expression. What is the rule in England as regards fishery rights when a river changes its course and cuts through the land of a neighbouring owner? Has the rule been applied here? If not, state the rea-

Bengal and had been in possession of the same under a Govt. grant for many years. Subsequently a channel was broken by the river though the Respondents' land. The Appellants claimed the exclusive fishery in this channel also as falling within the up stream and down stream limits of their several fishery and alleged that the Respondents were trespassers when they fished in it. The Respondents justified their claim to fish in the channel of which they owned both the bed and the banks as part of their rights as owners of the subjacent soil. *Held* that the Appellants were entitled to an exclusive fishery in the disputed channel also. Their Lordships of the Judicial Committee reviewing the whole series of decisions in Bengal on the subject from 1807 to 1905 observed: "It must now be taken as decided in Bengal that the Govt.'s grantee can follow the shifting river for the enjoyment of his exclusive fishery as long as the waters form part of the river system within the upstream and downstream limits of his grant, whether the Govt. owns the soil subjacent to such waters as being the long-established bed or whether the soil is still in a riparian proprietor as being the site of the river's recent encroachment. "The analogous rule in the United Kingdom connecting the subjects' right to an exclusive fishery in tidal navigable waters with the limits of the Crown's ownership of the subjacent soil, is the result of conditions partly historical and partly geographical which have no counterpart in Lower Bengal, where above all the difference, indeed the contrast, of physical conditions is capital."

Note:—In a several fishery, a person has the exclusive right of fishing in water covering land which does not belong to himself. Jalkar or the right of fishery may exist in India as an incorporeal hereditament and as a right to be be exercised on the land of another. (20 W. R. '44). A Jalkar (right of fishery) is immovable property within the definition of immovable property as set out in the General Clauses Act: it is a benefit arising out of land covered by water. It is so, for purposes of S. 106 of the Transfer of Property Act also. (20 Cal. 446). A Jalkar or right of fishery does not import any interest in the soil itself and is therefore not an interest in land (9 Cal. 18).

A right of Jalkar in a public navigable river can exist apart from

the right to the bed of the river but the right of fishery in a non-tidal and non-navigable river is dependent on and incidental to the ownership of the soil or bed of the river. (10 C. W. N. 540). The right of fishing in a tidal navigable river, as also the bed of the river itielf may be granted by the Govt. to private individuals to be held by them as private property, subject, of course, to the right of navigation and such other rights as the public have in the river. (2 Bomb. 19 ; 12 C. W. N. 105).

son why this has not been done. B. L. 1921(*a*). 1917 (*b*). *State shortly the law laid down by the Privy Council in the case of* Srinath v. Dinabandhu (42 Cal. 489) B. L. 1918(b), 1922 (a). *Can a right of* julkar *in a public navigable river exist apart from the right to the land of the river or must it necessarily follow that right ? Give reason for your answer.* B. L. 1924(a). *"The right of fishery when once created by Government is forever enjoyable only in waters that continue to flow precisely over the ground which was in the Crown at the date of the grant." Discuss the proposition supporting your answer by authorities.* B. L. 1918(a).

A general right of fishery in a river, when not otherwise defined, is restricted to the channel of the river and waters considered to form part of it, not extending to adjacent lakes and other pieces of water occasionally supplied by overfloodings of the river but not actually connected with the channel of it. (2 Sev. Rep. pp. 463, 465 & 467—note). If a river shifts its course leaving lakes, *dobas* or sheets of water in its old bed, the grantee of the exclusive right of fishery in the river retains that right over such lakes and *dobas* as long as these latter remain in communication with the main channel at all seasons of the year. (33 Cal. 15) Where it is found that a piece of water which was at one time a part of the bed of the river, is still connected with it, although the connection may dry up in the hot weather, the person who has fishing rights in the river is entitled to the fishing rights in the said water. (302 Cal. 1141) In 12 C. W. N. 559, it has been *held* that when on acount of the change in the course of a public navigable river, an arm of the river ceases to be an arm of the flowing river, the person who had a right of fishery in the river ceases to have any right to it.

The Jalkar or right of fishery in a navigable river is not affected by reason of the river having merely changed its course, (17 Cal. 963) for when a river changes its course fishery rights continue to subsist in the river in its new course. (12 C. W. N. 105, 1 Morley's Digest, 561). Such rights depend on identity of the river in which it is enjoyed and are not confined to such waters of that river as are superimposed on the very land once owned by the grantor of the right.

[**Problem** :—Government grants to X the right of exclusive fishery over a portion of a public navigable river. After the settle-

ment by a sudden change in the course of the river, a navigable channel is formed which flows over the land of X. Discuss, with reference to case-law, the relative jalkar of X and Y in the new channel. **B. L. 1926 (b).**]

Explain the expression "Jalkar." B. L. 1923(b), 1925 (a).

"The right of fishing is indissolubly connected with the right of the soil subjacent to the water in which the fishing right enjoyed." B. L. 1924(b).

Bengal Patni Taluk Regulation.

(VIII OF 1819.)

Give a short account of the circumstances under which the Patni Regulation was passed. B. L. 1906.

Object and Policy of the Regulation.—By the rules of the Permanent Settlement, the proprietors of estates paying revenue to Government, were declared entitled to make any arrangements for the leasing of their lands in taluk or otherwise, that they might deem most conducive to their interests. But by the Regulation XLIV of 1793, all such arrangements were subjected to two limitations—*first*, that the *jama* or rent should not be fixed for a period exceeding 10 years; and *secondly*, that in case of a sale for Government arrears such leases or arrangements should stand cancelled from the day of sale. In practice, however, the grants of taluks, and other leases at a rent fixed in perpetuity had been common with the Zemindars of Bengal inspite of the above Regulations. The provisions of Section 2, Reg. XLIV, 1793, by which the period of all fixed engagements for rent was limited to 10 years, have been rescinded by Section 2, Regulation V, 1812 and in Reg. XVIII of the same year, it is more distinctly declared that Zemindars were at liberty to grant *taluks* or other leases of their lands, fixing the rent in perpetuity at their discretion, subject, however, to the liability of being dissolved on sale of the grantor's estate for arrears of the Government revenue. But neither Regs. V and XVIII of 1812 nor any other declaration ever declared whether tenures in existence at the time and held under covenants or engagements

"Zemindars power to grant leases of their lands on terms most conducive to their interests. Reg. 44. of 1793 imposed the limitation that Jama should not be fixed for a period exceeding 10 years. In practice, however, leases at a

entered into by the parties in violation of the rule of Sec. 2, Reg. XLIV, 1793, should, if called in question, be deemed invalid and void as theretofore. This point, it has been deemed necessary to set at rest by a general declaration of the validity of any tenures that may be now in existence, notwithstanding that they may have been granted at a rent fixed in perpetuity or for a longer term than ten years, while the rule fixing this limitation to the term of all such engagements and declaring null and void any granted in contravention thereto was in force. Further more, in the exercise of the privilege conceded to the Zemindars under direct engagements with the Government there has been created a tenure which had its origin on the estates of the Raja of Burdwan but has since been extended to other Zemindaries, the character of which tenure is, that it is a taluk created by the Zemindar to be held at a rent fixed in perpetuity by the lessee and his heirs forever. The tenant is called upon to furnish collateral security for rent and for his conduct generally, or he is excused from this obligation at the Zemindar's discretion; but even if the original tenant be excused, still in case of sale for arrears or other operation leading to the introduction of another tenant, such incumbent has, always in practice, been liable to be so called upon at the option of the Zemindar. By the terms also of the engagements interchanged, it is amongst other stipulations provided that in case of an arrear occurring the tenure may be brought to sale by the Zemindar and, if the sale do not yield a sufficient amount to make good the balance of rent at the time due, the remaining property of the defaulter shall be further answerable for the demand. These tenures have usually been denominated *patni taluks* and it has been a common practice of the holders of them to under-let on precisely similar terms to other persons, who, on taking such leases, went by the name of *darpatni talukdars*. These again sometimes similarly under-let to *se-patnidars* and the conditions of all title-deeds vary in nothing material from the original engagements executed by the first holder. In these engagements, however, it is not stipulated whether the sale thus reserved to himself by grantor is for his own benefit or for that of the tenant, that is whether, in case

rent fixed in perpetuity had been common. Reg. VI of 1812 rescinded the limitation but omitted to declare the validity or otherwise of the tenures created in contravention of Reg. 44 of 1793. This Reg. declares the validity of such tenures (See sec. 2). In excercise of the privilege conceded to zemindars for leasing of their lands, there has been created a tenure (which had its origin on the estate of Raja of Burdwan) the character of which is that (1) it is a perpetual lease granted by Zemindar to be held by leasee and his heirs for ever at a rent fixed in perpetuity; (2) the patnidar may be called upon to fur-

nish collateral security for rent as well as for his conduct generally ; (3) it may be brought to sale for arrears for which other properties of defaulter are also liable. Common practice of underletting on similar terms. Patni Reg. passed with a view— (1) to regulate the nature of patni-taluk ; (2) to declare the legality of the practice of under-letting (excercised by patnidars and others ; (3) to make provision for protection of under-lessees from collusion of his landlord with the Zemindar or other for his ruin ; (4) to secure just rights of Zemindar on sale of the patni under the Reg ; (5) to lay down the procedure

the proceeds of sale should exceed the Zemindar's demand of rent, the tenant would be entitled to such excess ; neither is the manner of the sale specified, nor do the usages of the country nor the regulation of Govt. afford any distinct rules, by the application of which to the specified cases, the defects alluded to could be supplied or the points of doubt and difficulty involved in the omission be brought to determination in a consistent and uniform manner. The tenures in question have extended to the several Zillahs of Bengal and the mischiefs which have arisen from the want of a consistent rule of action for the guidance of the Courts in regard to them have been productive of such confusion as to demand the interference of the legislature. It has accordingly been deemed necessary to regulate and define the nature of the property given and acquired on the creation of a *patni taluk* as above described, also to declare the legality of the practice of under-letting in the manner in which it has been exercised by the *patnidars* and others, establishing at the same time such provisions as have appeared calculated to protect the under lessee from any collusion of his immediate superior with the Zemindar or other for his ruin as well as to secure the just rights of the Zemindar on the sale of any tenure under the stipulations of the original engagements entered into with him. It has further been deemed indispensable to fix the process by which the said tenures are to be brought to sale and the form and the manner of conducting such sale ; and whereas the estates of Zemindars under engagements with Govt. are liable to be brought to sale at any time for an arrear in the revenue payable by monthly kists to Govt. it has seemed just to allow any Zemindar who may have granted tenures with a stipulation of the rights to sell for arrears the opportunity of availing himself of this means of realising his dues in the middle of the year as well as at the close, instead of only at the end of the Bengali year as heretofore allowed by the Regulation in force. It has further been deemed equitable to extend this rule to all cases in which the right of sale may have been reserved, even though, in conformity with the Regulations heretofore in force, the stipulation for sale contained in the

engagements interchanged may have restricted such sale to the case of a demand of rent remaining unpaid at the close of the Bengali year. The following rules have accordingly been enacted by the G. G. in Council to take effect from 3rd September, 1819, throughout the several districts of the Province of Bengal including Midnapur (S. 1, Preamble) :

(5) to regulate the form and manner of conducting the sale ; (6) to allow the Zemindar means of realising his dues in the middle as well as at the end of the year ; (7) to extend the right to midyear and year-end sale to cases where year-end sale only stipulated for.

Origin and Nature of Patni Taluks—At the Permanent Settlement Government by abdicating its position as the exclusive possessor of the soil and contenting itself with a permanent rent-charge on the land, escaped thence-forward the labour and risks attendant upon detailed mofussal management. The Zemindars were not slow to follow the example set them and immediately began to dispose of their Zemindaris in a similar manner, more especially as the system afforded them the only means of escape from the ruin threatened by the high assessment of land revenue made at the time of the Permanent Settlement. The Patni Taluks had their origin in the estates of the Maharaja of Burdwan. The estates of the Maharaja were saved by the creation of these patni-taluks. The assessment of land revenue on the estates settled with the Burdwan Raj was very high. For easy and punctual realization of rent, leases to middle men in perpetuity and at fixed rent were granted to a large number of intermediaries, who were thus made proprietors in the same way as the Govt. has made the Maharaja of Burdwan a proprietor. By degrees the system extended to other Zemindaries and by the year 1819 there was so very large number of patni taluks, especially in the districts of Hooghly, Burdwan, Bankura, Nadia and Purnea, that they were formally legalised by Regulation VIII of that year and means were afforded to the Zemindars of recovering arrears of rent from their patnidars almost identical with those by which the demands of Govt. revenue were enforced against themselves. (Tagore Law Lectures, 1895 ; Roy's Patni Sale Law p. 4.)

Give an account of the origin of Patni taluks. B. L. 1912(*b*).

What is a Patni tenure ? B. L. 1913(*b*), 1902.

Describe a Patni taluk stating its prominent characteristics. B. L. 1904.

What were the rights confirmed to or acquired by Patnidars upon passing of Reg. VIII of 1 19 in supersession of the limitations imposed by Regulations in 1793 and subsequently,

The original meaning of the word "patni" seems to be "settled" and patni taluk means a dependent tenure settled in perpetuity at fixed rent. The expression patni taluk *prima facie* conveys an hereditary and transferable interest in land liable to summary sales,

on the powers of the Zemindars to create under-tenures ? B. L. 1911(*b*).

Can the rent of a patni be realised otherwise than under Reg. VIII of 1819 ? B. L. 1916(*b*), 1921 (suppl.), 1924 (*a*).

State the general characteristics of Patni Taluks. B. L. 1922(*b*), 1926 (*a*).

What are the principal incidents of a patni taluk ? B. L. 1925(*a*).

under Reg. VIII of 1819 for arrears of rent. This liability to summary biennial sales at the instance of the Zemindar is a feature which distinguishes the patni taluks from other permanent tenures. But it must be remembered that the summary sales may be availed of only in case of arrears of rent due on account of the current year (in case of mid-year sale) or of the year just expired (in case of the first sale) and that the antecedent rents due for previous years cannot be realised by summary sale under the Regulation—they, being mere personal debts, must be recovered in the same way as other debts by a regular suit in Civil Courts. The Zemindar has, however, the additional right of bringing patni taluks to sale under the ordinary procedure laid down for other classes of tenures.

"A patni taluk is heritable, capable of being transferred by sale, gift or otherwise at the discretion of the holder answerable for his personal debts and subject to the process of the Civil Courts in the same manner as other immovable property. A patni taluk is not liable to be cancelled for default in payment of the rent thereof, but the tenure may be brought to sale by public auction and the defaulting patnidar is entitled to any surplus sale proceeds beyond the arrears of rent due thereupon. A patni talukdar is entitled to let out the lands composing his taluk in any manner most conducive to his interest and any engagements entered into by such talukdar with others are legal and binding between the parties to the same, their heirs and assignees: provided, however, that no such engagements shall operate so as to prejudice the right of the proprietor to hold the patni taluk answerable for any arrear of his rent in the state in which he granted it and free of all incumbrances resulting from the act of his tenant, the patnidar." (Field)

A patni taluk cannot cover lands of more than one estate. It is quite clear that a patni taluk being the offspring of an estate cannot be more extensive than the estate itself. (Board's Mis. Pro. 214, 1889).

Where a Patni taluk already exists, the Zemindar cannot again let out his land in lease of any kind. (Board's Mis. Pro. 128, 1882). A patni taluk is liable to annulment on the sale of the parent estate for arrears of revenue unless protected by Common or Special registry provided for in Ss. 37 and 39 of Act XI of 1859.

Can proprietors of temporarily settled estate create panni.—A patni taluk cannot be created by the proprietor of a temporarily-settled estate. A patni taluk has been defined in the Preamble to this Regulation as a taluk created by the Zemindar to be held at a *rent fixed in perpetuity* by the lessee and his heirs for ever. Consequently, it cannot be created in a temporarily-settled estate. The proprietor of a temporarily-settled estate may create a permanent tenure, because his own proprietary right is permanent, but he cannot create a permanent tenure at a fixed rent, because his own engagement with Govt. as regards the amount of his assessment is not a permanent one. (Board's Proceedings No. 196, 1881).

What are the characteristic features of a Patni tenure ? Is a proprietor of a temporarily settled estate competent to create a patni taluk ? B. L. 1919(*b*), 1926 (*a*).

Can a Hindu widow create putni.—A Hindu widow can create a valid *patni* on her husband's estate, if there is legal necessity to justify the alienation. A Hindu widow is not a tenant for life but is the owner of her husband's estate subject to certain restrictions on alienation and subject to its devolving upon her husband's heirs on her death. If a Hindu widow grants a patni lease under her husband's estate, the putnidar acquires no more than life-interest of the widow if there is no legal necessity to justify the lease. The grant of a *putni* by a Hindu widow without legal necessity is not void but only voidable and may be validated by the consent of the reversioner. Even when there is no legal necessity, a Hindu widow can validly create *putni* on her husband's estate which has devolved on her, with the consent of the next reversioner. (13 C. W. N. 201 ; 10 Cal. 1102 ; 22 Cal. 354 ; 25 Bom. 129). The consent of the reversioner is effective even when given after the execution of the deed of transfer. (12 C. W. N. 74, P. C.) In order to set aside a *putni* lease granted by a Hindu widow, the reversioner must bring a suit within 12 years from the date on which the cause of action arose.

Who can grant a Patni Taluk ? Can a Hindu widow grant a patni ? Discuss, B.L. 1920(*a*).

It is doubtful if a proprietor's widowed mother can grant a valid permanent lease. (*See* 13 W. R. 267). In 32 Cal. 669, there is an *obiter dictum* that a lease granted by the proprietor's widowed mother in the course of the management of an estate is only voidable and that if it is granted for legal necessity, it is absolutely good and cannot be set aside.

Creation of Patni by Mahomedan widow.—Although according to Mahomedan law the mother of a minor is not the guardian of his property, yet, if she deals with the minor's estate as his *defacto* guardian, her acts, if they are for the benefit of the minor should be upheld in the absence of fraud or any other element of that nature. (34 Cal. 36, 65).

Creation of Patni by Shebait.—A grant of a patni lease by a *shebait* of a *debutter* estate is not necessarily void, provided that it is made on account of unavoidable necessity. In this respect the power of a *shebait* is similar to that of a manager of a minor's property. A permanent lease of *debutter* property is void if it is not executed for legal necessity (36 Cal. 1003 P. C., 12 C. W. N.) The period of limitation in such cases is governed by Sec. 10 and not Art. 134 of the Limitation Act.

Can a intermediate interest be created between a Zemindari and a patni tenure? Give reasons. (B. L. 1924(a).

Intermediate interest between Zemindari and Patni—An intermediate interest can be created between a Zemindari and a patni. [9 C. W. N. 656; 7 C. L. J. 23, notes-portion; *Nilambar Ghose* v. *Mir Mahachanuddin* (34 C. L. J. 77).] The contrary view has, however, been held in 14 C. W. N. 389, and 50 Cal. 146 where it has been *held* that a Zemindar cannot lawfully create a permanent tenure between his own interest and a patni taluk of the first decree. "Having regard to the provisions of the Patni Regulation, it appears that there cannot be any intermediate tenure between a Zemindari and a patni. So, where a Zemindar grants a lease above a patni, it should be construed to be only an assignment of the rent payable to the Zemindar and there is no relationship of landlord and tenant between the so called lessee and patnidar." (Sen's Bengal Tenancy Act, p. 61). *See* also 50 Cal. 146.

Patni if governed by Bengal Tenancy Act:—*Prima-facie* a patni lease comes within the purview of the Transfer of Property Act. (28 Cal. 744). But a patni tenure consisting of agricultural or horticultural lands is governed by the B. T. Act. (20 C. L. J. 1.) A patnidar in order to come within the purview of the B. T. Act must be a person under whom the occupants of land must occupy the same for agricultural or horticultural purposes. When a patni is governed by the B. T. Act, nothing in that Act shall affect any

enactment relating to patni tenures, in so far as it relates to those tenures. [*See* Sec. 195 (e), B. T. Act.].

Leases fixing rent in perpetuity for a longer term than 10 years declared valid though executed while S. 2. Reg. XLIV of 1793 was in force.

2 (1) Any leases or engagements for the fixing of rent now in existence, that may have been granted or concluded, for a term of years, or in perpetuity, by a proprietor under engagements with Govt. or other person competent to grant the same, shall be deemed good and valid tenures according to the terms of the covenants or engagements interchanged, notwithstanding the same may have been executed while Sec. 2, Reg. XLIV of 1793, (which limited the period for which it was lawful to grant such engagements to 10 years and declared all that might be entered into for a longer term to be null and void) was in full force and effect ; and notwithstanding that the stipulation of the said leases may be in violation of the rule in question.

Lease shall however stand cancelled upon revenue sale. *Write a short essay on the special incidents of patni tenures.* B.L. 1910(*b*).

(2) But nothing herein contained shall be held to exempt any tenures held under engagements from proprietors of estates paying revenue to Govt. from the liability to be cancelled on sale of the said estates for arrears of the said revenue, unless especially exempted from such liability by any other specific rule of the Regulations in force. (S. 2).

Patni Taluks are tenures in perpetuity at a fixed rent, heritable, transferable, answerable for debts and subject to process of Courts. *Discuss the incidents of a Patni tenure.* B. L. 1926(*b*).

3 (1) **Incidents of Patni Taluks**—The tenures known by the name of *patni talúk*, as described in Sec. 1 of this Regulation, shall be deemed to be valid tenures in perpetuity according to the terms of the engagements under which they are held. They are heritable and capable of being transferred * by sale, gift or otherwise at the discretion of the holder, as well as answerable for his personal debts and subject to the process of the Courts in the same manner as other real property.

Patnidars competent to under-let in any manner

(2) Patni talukdars shall be competent to let out the lands comprising their taluks in any manner they may deem most conducive to their interests and any engagements so entered into by such talukdars with others shall be legal and binding between the parties to the same, their heirs and assignees : *Provided*, however, that no such

* A transfer of his tenure by a patnidar is not binding on the Zemindar, unless made strictly in accordance with the provision of this Regulation (13 M. I. A. 160).

most conducive to their interest.

engagements shall operate to the prejudice of the right of the Zemindar to hold the superior tenure answerable for any arrear of his rent in the state in which he granted it and free of all incumbrances resulting from the act of his tenant.

What is a Patni taluk? Indicate its main incidents and point out in what respect it differs from an independent taluk. B. L. 1902.

(3) In cases of an arrear occurring upon any patni tenure, it shall not be liable to be cancelled for the same, but the tenure shall be brought to sale by public auction, and holder of the tenure will be entitled to any excess in the proceeds of such sale beyond the amount of the arrear of rent due, subject, however, to the provisions contained in S. 17 of this Regulation. (S. 3).

Is a patni taluk liable to cancelment or forfeiture by law or by agreement for non-payment of rent? B. L. 1904. Patni tenures are not voidable for arrears but liable to be sold by public auction, the patnidar being entitled to surplus sale proceeds.

Note.—The nature of the property given to a patnidar is defined in this section. In this and in the following two sections the legislature has described the respective rights, duties, and liabilities of a patnidar and a Zemindar.

4. If the holder of a patni taluk shall have under-let in such manner as to have conveyed a similar interest to that enjoyed by himself, as explained in the Preamble (Sec. 1) to this Regulation, the holder of such a tenure shall be deemed to have acquired all the rights and immunities, declared in the preceding section to attach to patni taluks, in so far as concern the grantor of such under-tenure. The same construction shall also hold in the case of patni taluks of the third or fourth degree. (S. 4).

What are the respective duties, rights and liabilities of the Zemindar under the Regulation? B. L. 1913(*b*). Inferior tenures held under similar title-deeds will be deemed to confer a similar interest to that provided for

5. (1) The right of alienation having been declared to vest in the holder of a patni taluk, it shall not be competent to the Zemindar or other superior to refuse to register and otherwise to give effect to such alienations by discharging the party transferring its interest from personal responsibility and by accepting the engagements of the transferee. In conformity, however, with established usage, the Zemindar or other superior shall be entitled to exact a fee upon every such alienation, and the rate of the said fee is fixed at two per cent on the jama or annual rent of the intertest transferred, until the same shall amount to Rs. 100, which sum shall be the maximum of any fee to be exacted on this account. The Zemindar shall also be entitled to demand substantial

security from the transferee or purchaser to the amount of half the *jama* or yearly rent, payable to him from the tenure transferred, the condition of furnishing such security on requisition being understood to be one of the original liabilities of the tenure.

(2) The above rules * shall apply equally to the case of a sale made in execution of a decree or judgment of court, as to all other alienations ; but it shall not apply to the case of sale for an arrear in the rent due to the Zemindar or other superior under the Regulation. The purchaser at such a sale shall be entitled to have his name registered and to obtain possession without fee, though of course liable to be called upon to give security under the conditions of the tenure purchased. (S. 5).

patni-taluks in Sec. 3. Zemindar not entitled to refuse to give effect to a transfer. But may demand his fee. Fee fixed at 2 p. c. on the jama. But the maximum Rs. 100. May also demand security, as far as half the jama. Above rules to apply to sales in execution and all alienations. But no fee on sale for arrears.

Transfer of Patni tenure—Ss. 12 and 13, Bengal Tenancy Act.—Sec. 12 (Voluntary transfer of permanent tenure) and Sec. 13 (Transfer of permanent tenure by sale in execution of decree other than decree for rent) of the Bengal Tenancy Act do not apply to patni tenures. Sec. 195 *(e)* of the Act provides that nothing in that Act shall affect any enactment relating to patni tenures, in so far as it relates to those tenures. Under Secs. 5 and 6 of the Patni Regulation, application has to be made for registration of the transfer of a patni tenure in the Zemindar's sherista and the landlord is entitled to a fee of 2 per cent. on the annual rent of the tenure transferred. As this Regulation is not affected by anything in that Act, the registration of transfers of patni tenures must continue to be made in the Zemindar's sherista, and not by the official machinary provided by the B. T. Act. On this point the High Court remarked as follows : "The Bengal Tenancy Act has introduced what may be called a system of public official registry of trasfers of permanent tenures, under which the landlord's fee has to be paid to, and the notice of transfer to be served on, him through the medium of the District Collector, while, under the law relating to *patni* tenures, the registration of transfers is

What are the rights and obligations of a Zemindar on the one hand and of the transferor and the transferee of a Patni on the other, under Reg. VIII of 1898, on the transfer of a Patni by voluntary sale or by a sale in execution of a decree of court ? B. L. 1909. *State some special features of a*

* The provions as to fee and security do not apply to transfer of a fractional portion of a patni nor to any alienation other than that of the entire interest. See sec. 6.

patni taluk. Is a stipulation in a patni lease that on non-payment of rent the, patni will be forfeited valid ? B. L. '19 (a). *In a patni lease there was a stipulation that in case of non-payment of rent by the patnidar, the tenancy would be forfeited. Is the stipulation valid ? Discuss.* B. L. '21(a). [*See S.* 3(3) *supra.*] *Can a Zemindar refuse to give effect to a transfer of a Patni taluk ? A patni is sold in execution of a decree. The purchaser does not comply with the rules laid down in S. 5 of Reg. 8 of 1819. What courses are left open to the Zemindar ?* C.U. 1921(a). *A, B, C and D are co-owners in equal shares of a*

of a private nature, as it has to be made in the sherista of the Zemindar, and the prescribed fee has to be paid or tendered directly to him without the intervention of any public officers. If this dual system be in force, then the purchaser.....would have the option of following the procedure provided in Sec. 13 or the Bengal Tenancy Act instead of proceeding under the Patni Regulation—a procedure which is clearly in derogation of the right of the Zemindar, under Regulation VIII of 1819, to have the transfer registered in his books in accordance with the rules therin laid down, and which, therefore, affects an enactment which is specially saved from the operation of the Bengal Tenancy Act by Sec. 195 *(e)* of that Act. We think, therefore, that Sec. 13 of the Bengal Tenancy Act does not apply to Patni tenures." (17 Cal. at pp. 167, 168). For the same reasons Sec. 12 of the Bengal Tenancy Act does not apply to Patni taluks as Secs. 5—7 of the Regulation VIII of 1819 apply to voluntary transfer of patni tenures, and not to transfers by sale in execution of decrees or on succession. But both Secs. 12 and 13 of the Bengal Tenancy Act have been held to apply to *darpatnis*, since Sec. 195 *(e)* of the Act does not exclude *darpatnis* from the operation of that Act. (18 Cal. 300).

Successions to Patni tenures : Ss. 15 and 16, Bengal Tenancy Act.—Sec. 5 of the Regulation lays down that upon alienation the Zemindar or other superior shall be entitled to exact a fee at the rate of 2 p. c. on the *jama* or annual rent of the interest transferred. It may, therefore, seem that the law does not subject a successor to a *patni* tenure by inheritance to the payment of any fee. But that is not so. According to Secs. 15 and 16 of the Bengal Tenanacy Act (VIII of 1885), on succession to the patni tenure the heir is bound to give notice of the succession and pay the requisite landlord's fee to the Zemindar through the Collector and until he does so he will not be entitled to recover rent from his tenants by suit, distraint, or other proceeding. Sections 15 and 16 of the Bengal Tenancy Act apply to Patni tenures. Sections 195 (*e*) of the Act lays down that nothing in the Act shall affect any enactment relating to patni tenures, so far as it relates to those tenures. As the Patni Regulation, VIII of 1819

provides no procedure for registration of changes by succession, it follows that the application of the sections would not affect anything in that Regulation, and therefore, Secs. 15 and 16 apply to the registration of succession to patni tenures by inheritance.

Section 15 of the Bengal Tenancy Act enacts that "when a succession to a permanent tenure takes place, the person succeeding shall give notice of the succession to the Collector in the prescribed form for the service of the notice on the landlord and shall pay to the Collector the landlord's fee prescribed by Sec. 12 together with the costs necsssary for its transmission to the landlord and the Collector shall cause the landlord's fee to be transmitted to, and the notice to be served on, the landlord named in the notice in the prescribed manner." Sec. 16 of the Act runs as follows: "A person becoming entitled to a permanent tenure by succession shall not be entitled to recover by suit, distraint or other proceeding any rent payable to him as the holder of the tenure until the Collector has received the notice, fees and costs referred to in the last foregoing section." [For notes on these sections *vide* Author's Student's Bengal Tenancy Act, 5th edition].

Secs. 5-6 of the Patni Regulation apply to voluntary alienations only and not to succession and transfers by operation of law. In such cases, therefore, no registration in the Zemindar's *sherista* is necessary.

certain patni, being the heirs of one X. A and D have complied with the provisions of sec. 16 of the B. T. Act but B and C have not. A brings a suit for the entire rent against the raiyats making B, C and D parties defendants to the suit, on the allegation that they have declined to join with him as plaintiffs. How would you dispose of the suit? B. L. '12(*b*). [*See* Author's Students Bengal Tenancy Act.]

6. (1) It shall be competent to the Zemindar or other superior to refuse the registry of any transfer until the fee above stipulated be paid and until substantial security for the amount specified be tendered and accepted; *provided*, however, that if the security tendered by any purchaser or transferee should not be approved by the Zemindar and the party tendering it shall be dissatisfied with such rejection he shall be competent to appeal therefrom by petition or common motion in the Civil Court of the district, which authority, if satisfied of the sufficiency of the security tendered, shall issue an injunction on the Zemindar to accept it and give effect to the transfer without delay.

Zemindar may refuse sanction to transfer till fee and security be tendered. Sufficiency of security, if contested, to be determined by appeal to Civil Court.

(2) The rules of this and of the preceding section shall not apply to transfers of any fractional portion of a *patni taluk* nor to any alienation other than that of

When a patnidar sells his patni tenure can the landlord refuse to

the entire interest, for no apportionment of the Zemindar's reserved rent can be allowed to stand good unless made under his special sanction.

register the transfer? If he refuses to do so, what is the remedy of the transferee? B. L. 1923(a), 14(b). *A has purchased for Rs. 10,000, a patni tenure from B the patnidar recorded as such in the sherista of the Zemindar. A wishes to pay rent to the Zemindar but the latter refuses to accept rent from him or to recognise him as his Patnidar on the ground that B is not recorded Patnidar. What steps should A take in order to compel the Zemindar to accept rent from him?* B. L. '11 (b) *What is the rule in regard to the liability for land-lord's fee and security when (a) a patni is sold at a private sale, (b) sold under Reg. VIII of 1819*

Note.—The true meaning and intention of this clause is not to make the alienation of a fractional portion of a *patni taluk* without the sanction of the Zemindar absolutely void nor even to exempt the transferee from liability for rent jointly with the transferor, if the landlord chooses to recognise him as one of the joint holders of the Patni; but only to prevent any splitting of the tenure and apportionment of the rent without the sanction of the landlord (3 C. W. N. 38.) A patni taluk cannot be divided except by an act of the Zemindar or by an act recognised by him. A patnidar may generally transfer his tenure without the consent of the Zemindar, but he can only do so *in toto* and the transfer of a portion in no way affects the existence of the *patni* in its entirety or the rights of the Zemindar.

Effect of non-payment of fee and security.—The omission by transferee from a patnidar to pay the fee and security to the Zemindar does not however affect in any way his title. His rights are perfected upon the transfer by the patnidar and are not in any way contingent for their validity upon the peyment of the fee and the security. The only effect of the failure of the transferee to secure registration of his name is that the landlord is not bound to recognise his purchase, and may sell up the tenure in execution for arrears of rent obtained against the registered tenant. The status of a patnidar or darpatnidar does not depend upon registration by, or consent of, the Zemindars. (16 C. L. J. 301). The Zemindar is however not bound to accept payment of rent from an unregistered transferee of a portion nor he is bound to recognise any deposit of rent made by such a transferee in his own name. The registration of name in the Zemindar's *sherista* relieves the outgoing patnidar of all personal liability as to the payment of rent subsequent to the cessation of his possession while it enables the transferee to deal directly with the landlord and affords him better opportunity of protecting his tenure. Unless a purchaser's name is registered in the landlord's *sherista*, the landlord may recover his rent from the registered patnidar.

Right of Zemindar and Patnidar with regard to resumed Chakran lands situated within the Patni : Sec. 48 of the Village Choukidari Act (VI of 1870) provides :—"All Choukidari Chakran lands assigned for the benefit of any village in which a panchyat shall be appointed, shall be transferred to the Zemindar of the estate or tenure in which such lands may be situated." Sec. 51 of the Act provides :—"Such order shall operate to transfer to such Zemindar the land therein mentioned, subject to the amount of assessment therein mentioned, and subject to all contracts theretofore made in respect of or by virtue of any person other than the Zemindar may have any right to any land, portion of his estate or tenure, in the place in which the land may be situate."

It is a general principal of law that unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property and in the legal incidents thereof unless therefore there is an express reservation, the patnidar is entitled to the settlement of the resumed Chakran lands, Thus where a patni lease conveyed to the pntnidar all the lands of which the Zemindar at the time of the execution of the lease was possessed in the mouza of which the patni was granted and the mouza included *Choukidari* Chakran land, *held*, that on resumption by the Government and a settlement with the Zemindar under Act VI of 1870, the patnidar became entitled to possession of the Choukidari Chakran land, subject only to payment to the Zemindar of the extra assessment of revenue imposed on account of the resumed land (11 C. W. N. 201). But if in assessing the patni rent, the profits of all the lands including the Chakran lands were fully taken into account, the patnidar would not be liable to pay additional rent for the Chakran lands when they came into his possession. (5 C. L. J. 33).

6. (1) In case of the sale of a patni tenure in execution of a judgment of a Court, if the purchaser do not within one month from the sale, conform to the provisions of Sec. 5 of this Regulation in order to obtain the transfer of his tenure by the superior to whom the rent fixed upon it is payable, the Zemindar or other superior shall be entitled of his own authority to send

and (c) when it passes by succession ? What is the remedy of the landlord in case of refusal to discharge such liability ? B.L. 1916(*b*). *What are the rights and liabilities of a patnidar under Reg. VIII of 1819?* (See Sec. 3 supra). *What are his rights with regard to Chakran lands situated within the Patni resumed by Govt. and transferred to the Zemindar ?* B. L. 1918(*a*). *Explain the origin of Choukidari Chakran, lands, and write a short note on the respective rights of Zemindars and Patnidars in resumed choukidari chakran tands.* B. L. 1926(*a*). Upon public sale, if fee and security be not tendered within one month

Zemindar may attach.

a *sazawal* to attach and hold possession of the tenure until the forms prescribed be observed.

Note.—When a patni is sold in execution of a decree and the purchaser does not apply to the Zemindar to register the transfer and at the same time pay or tender the prescribed fee as required by S. 5, the Zemindar has two courses upon to him, namely, either to refuse to recognise the transfer and the purchaser as his tenant until the provisions of S. 5 are complied with or he can take proceedings under S. 7 and appoint his own *sazawal* or collector for collection and deduct his own rent from the collections before handing the surplus to the patnidar who is declared by S. 7 to take all the risks of the attachment. (17 Cal. 162). A Zemindar cannot bring a suit in the Civil Court to compel the purchaser of a patni in his estate sold by auction for arrear of rent to furnish security. A purchaser of a *patni* at a patni sale held under the Regulation or at a sale under a decree for arrears of rent held by a Civil Court is entitled to have his name registered in the Zemindar's *sherista* and to obtain possession without the payment of any fee but he is liable to be called upon to give security under the condition of the tenure purchased. But a purchaser at a sale under an ordinary Civil Court decree, must pay the same fee and security as may be demanded from a voluntary alience. (See Sec. 5 *supra*).

(2). In case also of the sale of a patni tenure for arrears of the rent due upon it under the rules of this Regulation, if security be required by the Zemindar and the purchaser fail to furnish the same within one month of the date of sale, the Zemindar shall similarly be entitled to send a *sazawal* to attach and hold possession of the interest which may have passed on the sale, to the exclusion of the purchaser until the prescribed security be given.

Attachment to have effect of a trust.

(3) Attachment made under this section shall be regarded as a trust for the benefit and at the risk of the purchasers: Consequently, after deducting the rent due and the expense of attaching, any surplus that may be yielded by the collections shall be held in deposit for such purchaser; but if the collections for the time being fall short of the rent, the tenure and person

of the purchaser shall be liable in the same manner as if no attachment had been made and the accounts produced by the Zemindar or other superiors making the attachment shall be received as *prima facie* evidence to warrant process for an arrear so accruing. (S. 7).

8 (1). **Sale of Patni Taluks**—Zemindars, *i, e.*, proprietors under direct engagements with the Govt. shall be entitled to apply in the manner following, for the periodical sales of any tenures, upon which the right of selling or bringing to sale for an arrear of rent has been specially reserved by stipulation in the engagements interchanged on the creation of the tenure. The exercise of this power shall not be confined to cases in which the stipulation for sale may have been unrestricted in regard to time, but shall apply equally to tenures held under engagements stipulating merely for a sale at the end of the year in conformity with the practice heretofore allowed by the Regulations in force.

Zemindars allowed periodical sales of tenure where rights to sell for arrears is reserved by stipulation.

Enumerate the main incidents of a patni tenure and mark the principal features which distinguish it from a mukarari maurasi tenure. B. L. 1927(*a*).

Note.—According to Sec. 8, cl. 1, the right of bringing to sale for an arrear of rent must be specially reserved by the Zemindar by stipulations to that effect in the engagements interchanged on the creation of the tenure by the Zemindar in order to entitle him to bring the taluk to sale for non-payment of rent under the Regulation.

What is the difference between a patni tenure and other permanent mukarari tenure? B.L. 1917(*b*).

Summary procedure for biennial sales for arrears of rent, through the agency of the Collector of the district in which the patni taluk is situated, is the chief peculiarity noticeable in the patni Regulation. Summary sales for arrears of revenue or rent are not allowed to any landlords, except the Govt. and the Zemindars *qua* patni taluks. By means of the biennial sales, Zemindars were allowed special facilities towards a speedy realization of the *patni* rent due.

State briefly the facilities afforded to a Zemindar by Reg. VIII of 1819 towards speedy realization of the patni rent due? B. L. 1911(*b*).

Only the recorded proprietor or proprietors jointly or by a common manager whose name is duly registered, may make application for sale under this Regulation. One of a number of co-proprietors or fractional co-sharers is not entitled to make the application unless the *patni* taluks is co-extensive with the interest of such fractional share or shares. If A, B and C are joint owners of an estate and if they have jointly created a *patni* taluk, A alone is not entitled to apply for sale under the Regulation either for the whole

A, B and C are joint zemindars. Each separate-

ly by different pattas, grants a patni of his own one-third share to X, Y and Z respectively. A, B and C jointly apply to the Collector under sec. 8 of Reg. VII of 1819 for sale of the entire patni held by X, Y and Z together. Can the sale take place? Can either A or B or C separately bring to sale under sec. 8 of Reg. VIII of 1918 the patni of his own one-third share? B. L. 1915(*b*).

rent due from the patnidar or for his own share only. But if he had created a patni of his own share, he would be entitled alone to apply. Even if after the creation of the patni by a number of proprietors jointly, the patnidar pays rent separately to each of the proprietors, according to his share, such a proprietor has not the right to apply. But if the several fractional proprietors and patnidar enter into separate engegements by executing leases and counterparts, the right of each proprietor may then be recognised by the Collector. In Board's Mis. Proceedings No. 62 of 1857, it was *held* that when an estate is held in patni from more than one Zemindar under different deeds, each deed may be held to have created a separate patni and each patni may be sold without reference to the tenures of the other fractional portions of the parent estate. The Regulation itself does not contemplate the case of any but owners of entire estates; but it seems, however, that the general law as to the rights of co-sharers is applicable. Registration of proprietor's name under Act VII (B. C.) of 1876 is, of course, absolutely necessary to entitle him to any relief under the Regulation. The rule as to who may apply for sale under the Regulation must be taken to be the same as that in suits for arrears of rent, where the tenure is sought to be made liable. (Mitra's Land Law pp. 145—146). Cf. Bengal Tenancy Act—*vide* the Author's Students' Bengal Tenancy Act, 5th Edition.)

Procedure of Patni Sale.

On what dates should sales under the patni law be applied for and for what arrears can such sales be held? B. L. 1906, 1914(*b*), 1916 (*a*), 1924 (*a*).

(*z*) **Procedure of first Sale.**—(*a*) On the first day of Baisakh, *i. e.*, in the commencement of the the year following that from which the rent is due, the Zemindar shall present a petition to the Collector, containing a specification of the arrears due to him on account of the expired year from the patnidars. This petition (in original) should be stuck up in some conspicuous part of the Collector's Cachary, with a notice, that if the amount claimed be not paid before the 1st of Jaistha following, the tenures of the defaulters will, on that day, be sold by public sale in liquidation. Should, however, the 1st of Jaistha fall on a Sunday or a holiday, the next subsequent day not a holiday shall be selected instead.

On what dates are applications to be made for first

Note.—Payment of arrear before the sale to stay the same

must be made to the Zemindar. A patni taluk was sold under this Regulation for arrears. Before the sale the amount of rent due was paid to an accountant in the Collector's office, but no notice, was given to the Zemindar or the Collector. A suit was brought to set aside the sale on the ground that this was a good payment and that at the time of sale, there was no arrear of rent due. It was decided that a payment under such circumstances was not sufficient, and the suit was dismissed. Two out of the three Judges who decided the case were also of opinion that a payment even to the Collector without notice to the Zemindar would not be sufficient. (8 B. L. R. 134). A patnidar may deposit his rent in court under the provision of S. 61, B. T. Act (18 C. W. N. 916). The payment of arrear can be made either (1) into Court or (2) to the Zemindar. It can be made into Court either by a talukdar of the second decree under S. 13 or by a Patnidar applying for a summary investigation under S. 14, cl. 2. In any other case, the payment must be made to the Zemindar, there being no provision in the Regulation empowering a patnidar to bring money into Court except in the case provided by clause 2, Sec. 14.

sale and the mid-year sale under the Patni Law ? On what dates are the sales held ? Is it necessary to pay the whole of the advertised balances to prevent the mid year sale ? If not what portion of the arrear is to be paid ? B.L. 1918(*b*). *State briefly the procedure under which Zemindars can realise Patni-rent through the Collector.* B. L. 1920(*a*).

(*b*) A similar notice shall be stuck up at the *Sadar Kachary* of the Zemindar himself and a copy or extract of such part of the notice as may apply to the individual case shall be by him sent to be similarly published at the *Kachary* or at the principal town or village upon the land of the defaulter.

On what dates of the year and for what arrears can a patni tenure be sold under the patni Regulation ? What is the procedure for such sales ? B. L. 1923

Note.—The words "land of the defaulter" probably mean the land of *patni* in arrear.

(*c*) The Zemindar shall be exclusively answerable for observance of the forms above prescribed, and the notice required to be sent into the *mofussil* shall be served by single *peon*, who shall bring back the receipt of the defaultor or of his manager for the same ; or in the event of inability to procure this, the signatures of three substantial persons residing in the neighbourhood in attestation of the notice having been brought and published on the spot.

Give a brie summary of the procedure laid down in Reg. VIII of 1819 for the summary sale of a patni for its arrears. B. L. 1908,

Note.—The expression "substantial persons" means men who

1921 (*b*), 1926 (*a*). *What are the dates on which the Zemindar may put a putni taluk to a summary sale?* B. L. '25 (*a*).

have some status in the community, men of local influence or respectability, such as Mondals, Choukidars, Lakhirajdars.

(*d*) In case the people of the village should object or refuse to sign their names in attestation, the peon shall go to the *Kachari* of the nearest *Munsiff*, or if there be no Munsiff, to the nearest *thana*, and there make voluntry oath of the same having been duly published, certificate to which effect shall be signed and sealed by the said officers and delivered to the *peon*.

(*e*) If it shall appear from the tenor of the receipt or attestation in question that the notice has been published at any time previous to the 15th of Baisakh, it shall be a sufficient warrant for the sale to proceed upon the day appointed.

A patnidar defaults to pay the rent for the Aswin kist. How should the Zemindar proceed to sell the patni under the Regulations? B. L. '13(a), *Describe shortly the steps that are to be taken by the Zemindars before the sale of a patni under Reg. VIII of 1819.* B. L. 1909. *Describe briefly the procedure under which Zemindars can have arrears of patni rent realised through the*

(3) **Procedure of mid-year sale**—On the first day of Kartic in the middle of the year the Zemindar shall be at liberty to present a similar petition with a statement of any balances that may be due on account of the rent of the current year up to the end of the month of Aswin, and to cause similar publication to be made of a sale of the tenures of defaulters, to take place on the first of Aghran, unless the whole of the advertised balance shall be paid before the date in question or so much of it as shall reduce the arrear, including any intermediate demand for the month of of Kartic, to less than one fourth of the total demand of the Zemindar according to the *Kistbundhi*, calculated from the commencement of the year to the last day of Kartic.

Note.—The sales are thus to be held twice every year. The first sale generally known as *Dwazdamahi* (twelve-monthly) sale takes place for arrears remaining due at the end of the expired year. The application for sale is to be made to the Collector of the district in which the lands of the taluk or the greater part thereof, are situated, on the first day of Baisakh following or if, that be a close day, on the first open day of the month, the sale taking place on the 1st of Jeth following. The mid-year sale generally known as *Swashmahi* (six-monthly) sale, is the one that takes place for the arrears from Baisadk to Aswin, the Zemindar being entitled

to make the application on the 1st Kartick or the first open day thereafter, the sale taking place in Aghran following.

Collector under Reg. VIII of 1819. B. L. 1912(*b*), 1916 (*a*), 1917 (*a*).

It must be remembered that these summary sales can take place only for the realisation of arrears of rent due on account of the current year (in case of *Shashmahi* sale) or the year just expired (in case of *Dwazdamahi* sale). Antecedent balances due for previous years cannot be summarily recovered under the procedure prescribed here.

All the formalities required by the Regulation must be strictly complied with, before a summary sale by auction of a patni-taluk for non-payment of rent should be proceeded with.

Notice of Sale.—The law requires the publication of the notice in three ways, *viz.*,—(1) by sticking it up in some conspicuous part of the Collector's *Kachari*, (2) by sticking up a similar notice at the Sadar Kachary of the Zemindar himself and (3) by the publication of a copy or extract of such part of the notice as may apply to the individual case at the Kachari or at the principal town or village upon the land, of the defaulter.

The first two notices may be general notices containing the names of more than one defaulter. The third notice is required to be served in the mofussil by a single peon who shall bring back the receipt of the defaulter or his mofussil agent or in the event of his inability to procure this, the signatures of three substantial persons, residing in the neighbourhood, in attestation of the notice having been brought and published on the spot. In case, however, the people of the village should object or refuse to sign their names in attestation, the peon is required to go to the Kachary of the nearest Munsiff or if there be no Munsiff, to the nearest thana and there make an affidavit of due publication—certificate to which effect shall be signed and sealed by the officers there and delivered to the peon.

A patni sale is held under Reg. VIII of 1819 after petitions had been presented to the Collector, the same

The latter part of the section which prescribes that the serving peon shall bring back the receipt of the defaulter or of his manager or in the event of his inability to procure it, that he shall obtain that which by the Regulation is substituted for it is merely directory and if not done, this does not vitiate the sale *provided the notice was duly served.* (9 W. R. 242).

being also stuck up in the Kachari with notice of public sale on the 1st of Jaith following but without a similar notice being published upon the land of the defaulter. Is the sale liable to be set aside ? B. L. 1911(*a*).

The non-publication of any of these notices is sufficient to vitiate any sale that may follow even if there be no proof of substantial injury to the defaulter. If a patni is sold for arrears of rent without the notice requred by this Regulation, the sale is informal and can be set aside notwithstanding the *bonafide* of the purchaser who will receive back his purchase-money. (21 W. R. 252*)*. It is absolutely necessary that notices of sale should be served in strict compliance with the directions given in Sec. 8 of Reg. VIII of 1819. (17 W. R. 447 ; 2 C. L. R. 357).

The Zemindar is exclusively answerable for the observance of the forms prescribed by the Regulation. There is no presumption in favour of the Zemindar of the notices having been duly served and it is not even necessary for a plaintiff, who brings a suit to reverse a sale, to set out the grounds for impeaching the due publication of the notice. The due publication of the notice prescribed by the Regulation forms an essential part of the foundation on which the summary power to sale a patni taluk for non-payment of rent is exercised by the Zemindar, who, when instituting the proceeding, is exclusively responsible for such publication being regularly conducted. Thus in a suit against the Zemindar to reverse the sale of a patni tenure held under Reg. VIII of 1819 on the ground of non-service of notice the burden of proving service lies on the defendant (Zemindar), according to the spirit of S. 106 of the Evidence Act (21 W. R. 397) and it is incumbent upon the landlord to show that the formalities prescribed by S. 8. of this Regulation have been complied with.* (27 Cal. 308 ; 9 Cal. 619 ; 19 Cal. 699). The contrary view has however been held by Tottenham, J. in 19 Cal. 703, where the learned Judge observes :—"Having regard to the general principle that a plaintiff is bound to prove his case and to the terms of S. 14 of the Regulation which is the law authorising a suit to be brought to set aside a *patni* sale, I confess I do not see why the plaintiff should be relieved of the burden of starting his case. The Regulation entitles any person to sue the Zemindar for the reversal of the sale,

* *Compare* Revenue Sale-Law. In a suit to set aside a patni sale the *onus* of proving due publications lies entirely upon the Zemindar, while, in the case of a revenue-sale, the *onus* of proving irregularity is on the party who impeaches the sale. (30 Cal. 1).

and upon *establishing a sufficient plea*, to obtain a decree. Non-service of notice may be a sufficient plea but to allege it is not of itself sufficient to establish it, and if no evidence as to publication was adduced on either side, it seems to be that the plaintiff would not be entitled to a decree. The provision in S. 8 that the Zemindar is exclusively answerable for the observance of the forms, means, I take it, that the Collector shall not be held responsible and does not mean that, in a suit by the defaulter to set aside the sale on the plea of non-observance of the forms, he shall not be required to do more than allege that they were not observed.

The provision in Sec. 8 requiring the notice of sale to be published before the 15th of Baisakh applies to the notice to be published in the Mofussil and not to the notice to be affixed at the collectorate. The words in the section "the same shall then be stuck up in some conspicuous part of the Kachery" only mean that the petition should be stuck up in a conspicuous part of the Kachary within a reasonable time before sale ; it does not mean that it must be stuck either immediately or before the service of the other notices referred to in the section or at least before the 15th of Baisakh. (2 C. W. N. 460).

The notice of sale at the middle of the year should contain a statement that "unless the whole of the advertised balance be paid before the date in question or so much of it as shall reduce the arrear, including any intermediate demand for the month of Kartick, to less than one-fourth or a four-anna portion of the total demand of the Zemindar according to the *Kistbandi*, calculated from the commencement of the year to the last day of Kartick," the sale shall take place on the 1st of Agrayan. This provision is not merely directory but mandatory and the want of such a statement in the notice has been held to vitiate the sale. (17 Cal. 474).

Is there any difference between clauses 2 & 3 of sec. 8 of Reg. VII of 1819 ? B. L. 1915(*b*).

In midyear sale for 6 months' arrears, the legislature does not deal so harshly with the defaulter as it does in respect of a year's rent and the provisions of clause 3 of S. 8 are not so stringent as those of clause 2 of the same. To bring into operation the provisions of clause 3, Sec. 8, relating to a midyear sale, the serving notice, according to the section, intimating to the *patnidar* that payment of ¾ of the balance due will prevent a sale is a condition precedent

to any sale taking place under the clause. Where a notice relating to a midyear sale followed clause 2 instead of clause 3, S. 8, and intimated that payment of the whole arrear would be the only way to stay the sale, *held* that the notice was essentially so defective as to justify the reversal of the sale (20 Cal. 86 P. C.).

Publication of the notice of sale of a tenure under Reg. VIII of 1819 is required to be in the manner prescribed in Sec. 8 and personal service on the defaulter is not sufficient. The object of directing local publication of the notice, is to warn the under-tenants of the contemplated sale proceedings and also to advertise the sale to those who may bid ; and this object would be frustrated if it were deemed sufficient to publish the notices at a distant *Kachary* or to serve them personally. If there is a *Kachary* on the land of the defaulting patnidar, meaning the land which is to be sold for arrears of the rent, the copy or extract of such part of the notice of sale as may apply to the tenure in question must be published at the *Kachery* and if there be no such Kachary, the copy or extract must be published at the principal town or village of the land. (9 Cal. 931 ; 14 Cal. 365 P. C.)

Rules for bidding etc. 15 p. c. to be paid on sale, or lot to be resold after 2 hours. Failing to pay romainder by the 8th day, resale on 9th day after.

9. **Sale how conducted :**—All sales of saleable tenures applied for under the rules of this Regulation shall be made in public *Kachary*. The land shall be sold to the highest bidder and everyone except the actual defaulter shall be free to bid, not excepting the Zemindar nor the under-tenant of the defaulter. 15 per cent of the purchase-money shall be paid immediately the lot is knocked down, and the officer conducting the sale shall be competent to refuse to accept a bid or to knock down a lot to any bidder unless he has assurance to his satisfaction that the amount required to be deposited is in hand for the purpose or will be produced within 2 hours. If the 15 per cent be not paid cash or in notes of the Bank of Bengal, within two hours of the sale, or an equivalent amount in Government securities be not lodged, the lot shall be resold on the same day, and if the remainder of the purchase-money be not paid by noon of the 8th day notice shall be given of re-sale on the following day, that is, on the 9th from the first sale, by proclaiming the same by beat of drum through the

bazar of the sader station of the Zillah, after which the lot shall be re sold at the appointed time at the risk of the first purchaser, who shall forfeit the advance of 15 per cent already made and be further answerable for any sum in which the proceeds of the second sale may fall short of the antecedent one—such deficiency to be levied by the process for the execution of decrees of the Civil Court. (S. 9).

Who may bid.—According to Sec. 9, every one not the actual defaulter shall be free to bid. The persons who are directly responsible either as joint or separate patnidars for the rents shall not repurchase, so that that the zemindar may not again be exposed to the liability of further default by or have to deal with, those who have before defaulted. (5. W. R. 106). A defaulter cannot lawfully under the Regulation, purchase the patni either in his own name or in the name of another person. (2 Hay. 356). But such a sale is not absolutely void, though it is voidable. (3 C. L. J. 93). A, B and C are joint owners of a Patni Taluk : A and B pay their shares of rent and the Zemindar receives the same in part payment of the entire rent : C makes a default and at the sale under the Regulation makes a purchase in the name of his son D. *Held* that as between the Zemindar and the defaulting patnidars the sale was valid ; but it was void so far as it created a title in favour of C to the other shares and C must be treated as having made the purchase on account of, and as trustee for, all the co-sharers. In the case of a *benami* purchase by the defaulter the sale is good as far as the Zemindar is concerned ; but as against the defaulter, the parties are exactly in the same position as they were before the sale. (16 W. R. 80 ; 20 W. R. 33 ; 2 C. L. R. 419).

A, B and C are joint owners of a Patni-taluk. A and B pay their shares of the rent and the Zemindar receives the same in part-payment of the entire rent : C makee a de-default and at the sale under the Regulation makes a pur-chase in the name of his son D. Have A and B any right to relief against C or D ? Would it make any differnce if C was a mortgagee of the interests of A and B ? B.L. 1913(b).

The prohibition regarding bidding is only against "actual defaulters :" the term defaulters includes not only a recorded, but also an unrecorded sharer of a patni. A mortgagee of the patni is entitled to bid and purchase the patni sold under this Regulation, for only the defaulters are prohibited to do so."

10. **Forms to be observed on selling.**—At the time of the sale notice previously stuck up in the

Zemindar to certify

balance and service of mofussil.

Kachary shall be taken down, and the lots be called successively in the order in which they may be found in that notice. A person shall attend on the part of the Zemindar with a statement of the payments made up to the day of sale on account of the balance of each advertised lot, together with the receipt or certificate of the notice directed to be published in the mufussil; nor shall any lot be put up to sale until the statement produced shall have been inspected and the existence of a balance for the year ascertained therefrom, nor until the receipt for the notice shall have been read—the observance of which forms shall be recorded in a separate *rubakari* to be held upon each lot sold. In the case of *midyear* sales, the *kistbandi* of the defaulter shall also be produced in order that it may be seen that the balance remaining unpaid exceeds a four-anná proportion of the demand upto the date of sale, nor shall the sale take place unless this be ascertained. The Zemindar shall be exclusively responsible for the correctness and authenticity of the papers to be thus exhibited,* nor shall the public officer making the sale shall be answerable in any respect except for its fairness and publicity, and for the observance of the rules prescribed for his guidance in this Regulation. (S. 10).

Difference in the procedures of Sashmahi and Dwadzmahi sales :—The procedure of the *Sashmahi* (Midyear) sale is the same as that of the *Dwadzmahi* (First) sale except in the following respects :—

(1) The First sale is to be applied for on the 1st of Baisakh for the balances due for the expired year. The Midyear sale is to be applied for on the 1st of Kartic for the balances due for the current year upto the end of Aswin.

(2) The notice of sale which is to be published in the mofussil must be published, (*a*) *in the case of the First sale*—before the 15th Baisakh and (*b*) *in the case of the Midyear sale*—before the 15th Kartik.

* The Zemindar is responsible for the correctness and authenticity of the papers and accounts submitted and also for the due service of the notice. If the statement of account produced is incorrect and there is no arrear of rent at the date of sale, the sale would be invalid. (7 W. R. 218, 24 W. R. 63).

(3) In the case of the First Sale, the notices of sale must state that unless the whole of the amount claimed be paid before the 1st of Jeth, the tenure of the defaulting patnidar, will, on that day, be sold. In the case of the Midyear sale, the notices must state that unless the whole of the amount claimed or so much of it, as shall reduce the arrear (including any intermediate demand for the month of Kartic) to less than one-fourth of the balance due, be paid before the 1st *Aghrayan*, the tenure of the defaulter will, on that day, be sold.

(4) In the case of the First Sale on the date of the sale, the Zemindar's man must attend with the accounts as also with the receipt or cerificate of service of the mofussil notice. In the case of the Midyear sale, he must attend with the receipt or certificate of service (as in the case of the First sale) as also with the *kistbandi* of the defaulter in order that it may be seen whether the balance exceeds a four-anna proportion of the demand upto the date of sale.

11. **Effect of Patni Sale.—(1) Tenure to be sold free of incumbrance by act of defaulter—** Any taluk or saleable tenure that may be disposed of at public sale under the rules of this Regulation for arrears of rent due on account of it, is sold free of all incumbrances that may have accrued upon it by the act of the defaulting proprietor, his representatives or assignees, unless the right of making such incumbrances shall have been expressly vested in the holder by a stipulation to that effect in the written engagements under which the said taluk is held. No transfer by sale, gift or the otherwise, no mortgage or other limited assignment shall be permitted to bar the indefeasible right of the Zemindars to hold the tenure of his creation answerable in the state in which he created it for the rent which is in fact his reserved property in the tenure, except the transfer or assignment should have been made with a condition to that effect under express authority obtained from such Zemindar.

What are the rights of a purchaser at a Patni Sale? B. L. 1908, '17(*b*), '14(*b*), 1909, 1913(*a*), 1921 (suppl.) 1921 (*b*).

Is the auction-purchaser bound by any act or omission of his predecessor? B. L. 1921 (*b*).

What are the rights of a purchaser of a Patni taluk at a sale held under Reg. VIII of 1819 for arrear of rent as regards avoidance of

"Free of all incumbrances that have accrued upon it by the act of the defaulting proprietor."—A the owner of a Zemindari, creates a tenure in favour of B, and subsequently grants a patni tenure in favour of C. A puts. C's patni tenure to sale

incumbrances? B. L. 1904. *What are the rights of a purchaser at a sale of a Patni under Reg. VIII of 1819 as regards (a) transfer, (b) under-leases of middlemen and (c) leases to khudkast raiyat made or granted by the defaulting patnidar? "Under the Patni Sale Law (Reg. VIII of 1819) a patni is sold free of all incumbrances that may have accrued upon it by act of the defaulting proprietor." Explain and illustrate this rule.* B. L. 1918(*b*). *Describe the rights and restrictions of the auction-purchaser to avoid incumbrances of all sorts.* B. L. 1912(*b*) *What subordinate tenancies and incumbrances are affected, and how, by*

under the Patni Regulation, D purchases it, D is not entitled to annul B's tenure; for in this case, the tenure in favor of B was not created by the defaulting proprietor—but it was created before the creation of the patni by the Zemindar himself.

A holds certain land in a Zemindari adversely for more than 12 years. The whole Zemindari is afterwards let in patni which is subsequently sold for arrears under Reg. VIII. of 1819. The purchaser cannot evict A, for the purchaser is entitled to have possession of the taluk in the same state as it stood at its creation by the Zemindar, free of all incumbrances that may have accrued upon it by the act of the defaulting proprietor. In this case the adverse possession by A had commenced and perfected into a statutory title before the patni was created and consequently it cannot correctly be said to be an incumbrance accruing upon the taluk by act of the defaulting patnidar within the meaning of this section. But if A had acquired title by adverse possession not against the Zeminder, but against the patnidar, * the case would be entirely different and the purchaser would be entitled to evict A. Adverse possession against the defaulting patnidar cannot be successfully set up as adverse possession aginst new purchaser.

Defaulting proprietor.—The expression means "the proprietor of the tenure in default" and is not restricted to the particular proprietor for whose default the tenure is brought to sale. It includes the defaulter as well as his predecessors being representatives or assignees of the original patnidar. (21 Cal. 702)

(2) **No under-lease to stand after sale**—In a like manner, on sale of a taluk for arrears, all leases originating with the holder of the former tenure, if creative of a middle interest between the resident cultivators and the late patnidar, must be considered to be cancelled, except the authority to grant them should have been specially transferred. The possessors of such interests must consequently lose the right to hold possession of the land and to collect the rents of the raiyats, this having been enjoyed merely in consequence of the

* But if in this case the patni was sold at a *private* sale, the purchaser could not evict A. *Vide* sec. 12.

defaulter's assignment of a certain portion of his own interest, the whole of which was liable for the rent.

(3) **Exception in favor of bonafide engagements with raiyats.**—But nothing herein contained shall entitle the purchaser of a taluk or other saleable tenure intermediate between the Zemindar and actual cultivator to eject a *khudkast* raiyat or resident and hereditary cultivator nor to cancel *bonafide* engagements made with such tenants by the late incumbent or his representative, except it be proved in a regular suit, to be brought by such purchaser for the adjustment of his rent that a higher rate would have been demandable at the time such engagements were contracted by his predecessor. (S. 11).

sales under Reg. VIII of 1815 (a).

(a) What incumbrances can be annulled by the purchaser of a patni tenure under the Patni Regulation? State the rights which are protected from being annulled?

(b) A the owner of a Zemindari creates a tenure in favour of B and subsequently grants a patni tenure in favour of C; A puts C's patni tenure to sale under the Patni Regulations; D purchases it; is D is entitled to annul B's tenure? Give reasons. B. L. 1916(a).

Note.—When a patni taluk is sold for arrears of rent the purchaser acquires it free from all incumbrances created by the defaulting patnidar. The purchaser is entitled to have possession of the taluk in the same state as it stood at its creation by the Zemindar, free of all incumbrances. But the effect of the sale is not *ipso facto* to cancel incumbrances created by the defaulter but to render them voidable, if the purchaser desire to avoid them. The purchaser must exercise desire to avoid them. The purchaser must exercise his option of avoiding incumbrances within 12 years from the date of his purchase or rather the confirmation thereof.

The incumbrances which a purchaser is entitled to avoid must be such as have come into existence since the date of the creation of the patni taluk. Any incumbrance existing from a previous date are not such as are void or voidable. Any under-tenure or incumbrance created with the permission of the proprietor is also not voidable.

Can a purchaser at a Patni sale recover possession of lands comprised in the Patni taluk from a person who acquired a title against the defaulting Patnidar by

Any incumbrance created or allowed to remain on the taluk by the act or omission of any talukdar, whether the defaulter himself or a previous holder or any person who had previously made default which ended in a sale of the patni for arrears is voidable. (21 Cal 702).

[Problem:—A the holder of a patni had granted a *mukarari* lease of certain lands within the Patni to B. Subsequently the Patni

adverse possession ?

B. L. 1914(*b*). *A holds certain lands in a zemindari adversely for more than 12 years. The whole Zemindari is afterwards let in patni which is subsequently sold for arrears under Reg. VIII of 1819. Can the purchaser evict A ? Would it make any difference if A had acquired title by adverse possession not against the Zemindar but against the patnidar ? In the last case, if the patni were sold at a private sale, could the purchaser evict A ? Give reasons.*

B. L. 1916(*b*). *What are the rights of the purchaser of a Patni at a sale held under Reg. VIII of 1819 ? State the interests which are*

was sold under the Patni Regulation and was purchased by C. C takes possession of the Patni and remains in possession for two years without interfering with the *mokarari*. C having defaulted to pay rent, the Patni is again sold under the Regulation and is purchased by D. D then sues to eject B, by setting aside the *mokarari*. Can he succeed ? Discuss. **B. L. 1924 (b).** *Ans.* Yes. *See* 21 Cal. 702 where it has been *held* that having regard to the policy and principle of the Regulation a Zemindar is entiled to bring a patni to sale in the same condition in which it was at time of its creation, and the purchahser is therefore, entitled to avoid all incumbrances imposed upon it since its creation, whether by the actual defaulter or by any of his predecessors. "The mukarari lease was an incumbrance, upon the patni but as much as S. 11 distinguishes in Cls. (1) & (2) between circumstances by way of sale, gift, mortgage or otherwise, and leases creative of an intermediate interest, it may be regarded as the latter. If treated as an incumbrance, it must be held to have accrued upon the patni by reason of the defaulting patnidar not having set it aside, though entitled to do so within the meaning of these words in cl. (1). If treated as a lease, the words in cl. (2) 'holder of the former tenure' are wide enough to include any patnidar whether the last or the previous holder." (*Ibid*, per Ghose J)]

Adverse possession of any part of the lands of the Patni against Patnidar either by a neighbouring landlord or by any person claiming a lakhiraj title is an incumbrance which the purchaser is entitled to get rid of. A person who has held possession of property adversely against patnidar, cannot successfully set up such adverse possession against a person who has purchased the property at a sale under Reg. VIII of 1819, as against such a purchaser adverse possession commences from the date when the sale becomes final and conclusive. (10 W. R. 15 ; 19 Cal. 787 ; 25 Cal. 167).

There are certain rights in land which are protected notwithstanding a sale under the Regulation. (*Compare* S. 160, B. T. Act) *Khud Kast* raiyats or resident hereditary cultivators are not liable to ejectment and bonafide engagements with them by the defaulter cannot be interfered with by a purchser. (13 B. L. R.).

But if it can be proved in a regular suit that a higher rate was demandable from any raiyat at the date of the engagement, the rent of such a raiyat may be enhanced. [Cf. sec. 167 (4) of the Bengal Tenancy Act.]

protected by the Reg. from the operation these rights. B. L. 1909.

An occupancy or non-occupancy holding, if not held by a *khudkast* raiyat, that is, a resident and hereditary cultivator is an incumbrance and not protected from ejectment by the term of Cl. 3, Sec. 11 and may be annulled by purchaser at a sale under the Regulation. (8 C. W. N. 13).

Certain raiyats have cut down and appropriated several palm-trees which stood on their holdings. They resist the claim of the landlord patnidar for damages on the ground that they have got a customary right not only to cut down but also to appropriate the trees. The landlord contends that as this custom came into existence and gradually developed after the creation of the patni and during its continuance and as he has purchased the property at a sale for arrears of rent under Reg. VIII of 1819, he is not bound by the customary right that may have

[Problem.—A patni taluk is purchased at a sale held under Reg. VIII of 1819. A tenant who has acquired a right of occupancy but is not a *khudkast* raiyat, holds land situated within the patni. Can the purchaser eject him? B. L. 1911 (*a*). Yes. See above].

In case of arrears of rent, a landlord of a patni taluk may either proceed under the Regulation or may sell the taluk under Chapter XIV of the Bengal Tenancy Act. In either case the purchaser is entitled to avoid the incumbrances created since the creation of the patni. The term "incumbrance" has nowhere been defined in the Regulation. But as instances of incumbrances have been mentioned transfers by way of sale, gift or otherwise, mortgages and other limited assignments and also leases created by the holder of the tenure. These instances of incumbrances are not however absolutely exhaustive. In 3 C. W. N. 13 an incumbrance has been defined as "anything that restricts or limits the rights of a patnidar and interferes with his enjoyment of the subject of the patni." Wharton in his Law Lexicon defines the term incumbrance "as a claim, lien or liability attached to property." In Sec. 161 of the Bengal Tenancy Act, the term "incumbrance" is defined as "any lien, sub-tenancy, easement or other right or interest created by the tenant in his tenure or holding or in limitation of his own interest therein and not being a protected interest." The Bengal Tenancy Act makes a distinction between an "incumbrance" and "a registered and notified incumbrance" created by a registered instrument, of which a copy has been served on the landlord not less than 3 months before the accrual of the arrear". The latter cannot be avoided at a sale under S. 164 B. T. Act but can be

grown up before his auction purchase. Is the purchaser landlord bound by this customary right?

B.L. 1912(*a*).

What subordinate interests are protected from annulment in the case of sale of a patni for its arrear under Reg. VIII of 1819?

B. L. 1919(*a*).

Explain the expressions:— Khudkast raiyat and Paikast raiyat.

B. L. 1918(*a*), 1926 (a).

Distinguish between Khudkast raiyat and Paikast raiyat. What were their position before the P. S.?

B. L. 1919(*b*).

What was the position of Khudkast and Paikast raiyats?

B. L. 1913(*a*).

Explain the expression :— Khudkast raiyat.

avoided at a sale under S. 165 of the Act. There is no such distinction in the Regulation VIII of 1819.

Khudkast and Paikast Raiyats.—Now the main division of raiyats is into those having a right of occupancy and those having no such right. The original division of the raiyats was into *Khudkast* and *Paikast*. The permanent tenants settled in the village were called *Khudkast* (*khud*=own, and *kast*=cultivation)—raiyat or raiyats, cultivating the land of their own village or the village in which they resided as distinguished from *Paikast* (*Pai*=near, living near, non-resident and *Kast*=cultivation)- -raiyat or raiyats who were residents of another or neighbouring village and cultivated land near their own village. The former had virtually hereditary right of occupancy but they could not transfer their rights. The latter had no such rights and were mere tenants at-will. "There were (originally) three classes of cultivators having an interest in the soil; first, the original settlers and their descendants; second, the immigrants who had permanently settled in the village; and third, the mere sojourners in the village or those who without living in the village cultivated the land of the village. The original settlers in the village with their descendants and those immigrants who had permanently settled in the village and had been admitted to share the same privileges, formed the class of *Khudkast* raiyats; their rights were regulated by custom, they had an hereditary right to cultivate the lands of the village. They were called *chapperband* (house-tied) *mowrasi* (hereditary) and *thani* (stationary). They could not be ousted while they continued to hold their holdings and pay the customary revenue; but on the other hand they could not originally transfer their holdings without the consent of the community. They had a privilege of keeping possession as long as they paid the rent stipulated for by them. The right of possession of this class of cultivators was so strong that even if they had abandoned their holdings or lost them by not keeping up the cultivation or by failing to pay the revenue, they or their descendants could, at any distance of time, reclaim them on the payment of a sufficient compensation to the holder. They could dig wells upon their land and let out water. They paid the customary rent, but it was higher than the rate of other cultivators

of former times in consequence of there being want of competition for lands. In some places when the assessment was once fixed, custom prohibited a measurement of the land with a view to surcharging the khudkasts. If, however, they failed to cultivate or to pay rent they would forfeit their holding—a penalty which as may be supposed in the scarcity of cultivators was generally waived for an increased payment. Their holings, however, were not trasferable. The other class of cultivators were *paikasts*, who came from another village, usually a neighbouring one, to cultivate the lands of the village which the *khudkasts* were unable to cultivate. They were tenants-at-will or more usually from year to year but sometimes for fixed periods. Thy had to be attracted by favorable terms since the competition formerly was for cultivators and hence they got half the produce. They paid fees to the *khudkasts*. They were mere sojourners in the village or cultivated while living in the village. This class of cultivators although they had no proprietary right, could not be ousted between sowing and harvest. Their interest was of an uncertain and precarious description and used to be settled by contract." (Phillips' Land Tenures, p. 12 *et seq* ; Ray's Rent Law, Introduction, p. XLIII). B. L. 1921 (suppl.), 1922 (a).

12. (1) **Above rule to take effect retrospectively.**—The rules of the preceding section being declaratory of the principle to be observed on all occasions wherein saleable tenures are made responsible for the Zemindar's reserved rent, will equally apply to the case of taluks, heretofore sold, as to those that may be sold henceforward if the sale shall have been fair and the process observed in conducting it shall have been that recognised and in use in the district at the time of selling.

(2) **Proviso.**—Nothing, however, herein contained shall operate to the prejudice of any agreement, express or implied, now subsisting between the purchaser of a taluk and the lessees of his predecessor.

(3) **Rule not to apply to private transfers.**—Neither shall the above rules for the fall of under tenure shall apply to any private transfer, nor to a public sale in execution of a decree, nor to the case of a relinquishment by the talukdar in favour of the zemin-

dars nor to any act originating with the former holder other than default as aforesaid. All such operations involve only a transfer of the tenure in the state in which it may be held at the time, and the new incumbent succeeds to no more than the reserved rights of the former tenant, such as they may be, and is of course subject to any restriction put upon the tenure by his act. (S. 12).

A Patni tenure is going to be sold for arrears of rent; who can stay such a sale? The rights of which classes of tenants will be safe, even on such a sale? B. L. 1926(*b*).

13. **Reason for allowing under-tenants means of staying sale.**—With reference to the injury that may be brought upon the holder of taluk of the second degree by the operation of the preceding rules in case the holder of the superior tenure purposely withholds the rents due from himself to the Zemindar, after having realised his own dues from the inferior tenantry, it is deemed necessary to allow such (inferior) talukdars the means of saving their tenures from ruin that must attend such a sale, and the following rules have accordingly been enacted for this purpose:—

What are the provisions in Reg. VIII of 1819 allowing inferior talukdars to save their taluks, when the superior patni taluk is advertised for sale under the Regulation? B. L. 1900.

(1) **How under-tenants may stay sale.**—Whenever any patni taluk may be advertised for sale under this Regulation for arrears of rent due to the Zemindar, the talukdars of the second degree or any number of them, shall be entitled to stay the final sale by paying into Court the amount of balance that may be declared due by the person attending on the part of the Zemindar, on the day appointed for sale. In like manner they shall be entitled to lodge money antecedently for the purpose of eventually answering any demand that may remain due on the day fixed for sale; and should the amount lodged be sufficient, the sale shall not proceed but after making good to the Zemindar the amount of his demand any excess shall be paid back to the person or persons who may have lodged it.

How may under-tenants stay sale of a patni tenure advertised for sale under the Patni Regulation?

Note.—On a sale of a patni taluk under this Regulation the inferior taluks held under the Patnidar are liable to be cancelled by the purchaser: And this injury may be brought on the under-tenures by the Patnidar purposely withholding the rent due from him to the Zemindar. To provide against such contingency the under-tenants have been given the right of saving their tenures

What are the reasons for allowing under-tenants

from ruin that must attend a patni sale. Cf. Ss. 170 and 171, Bengal Tenancy Act,—*vide* the Author's Students Bengal Tenancy Act, 5th edition.

means of staying sale ? B. L. 1916(a).

Any darpatnidar or any other under-tenure-holder whether his name is registered in the Zemindar's office or not may protect the patni from sale by paying the amount of arrears. But a resident and hereditary cultivator cannot stay a sale under the Regulation for his is a protected interest. The provisions for staying of sales under the Regulation are intended to afford means to under-tenants for the protection of their interests from ruin that would attend a patni sale and they are not meant for the Khudkast raiyats whose interests are *protected* under the Regulation. Cf. Sec. 170 (3) of the Bengal Tenancy Act.

How may a person holding a tenure under a Patnidar stay sale of the Patni taluk advertised for sale under the Patni Regulation ? Explain the reasons for allowing under-tenants the means of staying such sale. B. L. 1916(a), 1923 (a).

A darpatnidar holding in Darpatni only a fraction of the mahal held in patni by his superior landlord has a right to stay the sale by paying the arrears.

Can a resident and hereditary cultivator stop such sale ? Give reasons B. L. 1915(a)

[Problem.—X, *Darpatnidar*, who holds in *Darpatni* only a fraction of a mahal held in Patni tenure by his superior landlord pays the entire patni rent due by the latter to the Zemindar, in order to save the patni tenure of his superior landlord from a sale advertised under Reg. VIII of 1819. Has X any right under the law to make such payment ? Give reasons for your answer. X wishes to to recover the amount paid by him under the above circumstances. What steps can he take to gain his object ? B. L. 1910 (*a*)].

Who are the different persons who may under Reg. VIII of 1819 protect the property from sale by depositing the arrears due ? What are their rights resulting from such payment ? B. L. 1915(b)

The payment must be made *into Court*, not to the Zemindar out of Court and it would seem that the payment must be sufficient to stay the sale of the patni. (6 W. R. 84). In 8 Cal. 954, however, it has been held that money paid under S. 13 of Reg. VIII of 1891, in order to stay the final sale, may be paid to the Zemindar and not to the Court ; the words "into Court" can not be literally construed, as the Court has nothing to do with such sales, which are simply conducted by the Collector.

Briefly state the provisions of the

(2) **Procedure in case of amount lodged being rent due from under-tenant.**—If the amount so lodged be rent due by the inferior talukdar to the holder of the patni advertised for sale, the same shall be stated at the time of making the deposit and the amount shall be carried to the account of the tenant or

Regulation for recovery by a talukdar of second degree of the amount lodged by him for stopping the sale of the Patni. B. L. 1905.

tenants lodging it and be deducted from any claim or rent that may at any time be pending or be thereafter brought forward against him or them by the proprietor of the advertised tenure on account of the year or months for which the notice of sale may have been published.

State what the rights of a talukdar of the second degree are when he makes a payment to stay the sale of a patni under Reg. VIII of 1819? B. L. 1917 (b)

(3) **Procedure in case of amount lodged being advance from private funds.**—If the person or persons making such a deposit in order to stay the sale of the superior tenures shall have already paid the whole of the rent due from himself or themselves, so that the amount lodged is an advance from private funds and not a disbursement on account of the said rent, such deposit shall not be carried to credit in or set against, future demands for rent, but shall be considered as a loan made to the proprietor of the tenure preserved from sale by such means and the taluk so preserved shall be the security to the person or persons making the advance, who shall be considered to have a lien thereupon in the same manner as if the loan had been made upon mortgage ; and he or they shall be entitled, on applying for the same, to obtain immediate possession of the tenure of the defaulter in order to recover the amount so advanced from any profits belonging thereto. If the defaulter shall desire to recover his tenure from the hands of the person or persons who by making the advance may have acquired such an interest therein and entered on possession in consequence, he shall not be entitled to do so except upon payment of the entire sum advanced with interest at the rate of 12 per cent per annum upto the date of possession having been given as above, or upon exhibiting proof in a regular suit to be instituted for the purpose that the full amount so advanced with interest has been realised from the usufruct of the tenure. (S. 13).

What are the provisions in Reg. 8 of 1819 to protect the under-lessees from being ruined by the sale of the patni tenure? Can such a lessee get possession of the patni? If so, under what circumstances? B. L. 1919(b)

How can a Durpatnider protect the Patni from sale? Is he entitled to be reimbursed for the money

Note.—*Compare* Ss. 171—172, B. T. Act. The under-tenure holder, who makes the deposit under S. 13, cl. 4, of the Patni Regulation is entitled to remain in possession only so long as the full amount advanced with interest is not realised from the usufruct of the tenure. If, after his debt has been satisfied he does continue in occupation he does so at his peril and renders himself

liable to account for the profits received in excess. His position is analogous to that of a mortgagee in possession who stays on the permises after his dues have been satisfied. Compare S. 171 (c) B. T. Act. The main distinction between this section and Sec. 171 (c) B. T. Act is that under Sec. 13 of the Regulation a deposit can be made only by an under-tenant whereas under the B. T. Act, a deposit can be made by any person interested in the tenure or holding.

advanced ? B. L. 1922(b) *Under what circumstances may a dur-patnider or other inferior tenant deposit rent for preventing a patni summary sale ? What are the reasons for allowing such an inferior tenant to deposit the patni rent ?* B. L. 1925(a). *What is the effect of a sale of a patni tenure under Reg. VIII of 1819 on the rights of under-tenants? What privileges and rights have been conferred on them by the legislature when the patnidar either fails to pay or withholds the payment of patni rent ?* B. L. 1927(a).

Sec. 13, clause 4 of the Patni Regulation makes it a condition precedent to the creation of the lien that the amount lodged should be advanced from private funds and should be paid by the tenure-holder after he had already paid the whole of the rent due from himself (7 C. L. J. 504). A tender to stay a sale under this section must be of the whole of the Zemindar's rent and must be unconditional. (5 W. R. 39 ; 17 W. R. 122).

A *darpatnidar*, when he made a deposit to save the *patni* tenure from sale stated specifically that the rent due from him had been paid in full and what was lodged was an advance from private funds. Upon this representation deliberately made, he obtained possession of the *patni* taluk and was in possession when the *patnidar* brought a suit for rent of three years against him. It was found in the rent suit that the *darpatnidar* when he made the deposit was in arrear of a portion of the rent. *Held* that the *darpatnidar* could not deduct the amount deposited from the claim of the rent under cl. (3) of S. 13 of the Patni Regulation, as his case fell under cl. (4) of the section. It was not open to him to resile from the position he deliberately took up at the time he made the deposit. (17 C. L. J. 96).

If the under-tenant is himself in arrears, the amount deposited by him would go towards the satisfaction of his rent. If the under-tenant is not in arrear and has already paid his full rent, the amount deposited is considered to be an advance from private funds for which a statutory lien arises in favor of the depositor and he is entitled to be put in possession of the tenure upon application in order to recover the amount advanced from the profits. The lien created by cl. 4 of Sec. 13 of the Regulation is tantamount to an usufructuary mortgage. The under-tenure-holder who makes the deposit under

S. 13, Cl. 4 of the Regulation is entitled to remain in possession only so long as the full amount advanced with interest, is not realised from the usufruct of the tenure. The lien is extinguished as soon as the debt is satisfied from the profits of the tenure and the moment the lien is extinguished, the defaulter becomes entitled to recover possession. No order of the Collector is necessary in this behalf, nor is a regular suit essential to alter the legal position of the parties (7 C. L. J. 604).

The under-tenant not only has the security of the tenure which he preserves and of which he can obtain possession on application to the Collector but also has a right to recover the amount deposited by him as a loan in an ordinary suit. (13 W. R. I). Cf. B. T. Act, Sec. 170 [*Vide* Author's Students' Bengal Tenancy Act.] If inspite of the payment the tenure is sold, a suit will lie for reversal of the sale.

What remedy does the Regulation provide to the patnidar, if there be a sale without complying with its requirements? B. L. 1909.

14 (1) **Sale not to be stayed, unless arrear claimed be lodged; but suit to lie for its reversal.**—Should the balance claimed by a Zemindar on account of the rent of a patni tenure remain unpaid upon the day fixed for the sale of the tenure, the sale shall be made without reserve in the manner provided for in Ss. 9 and 10 of this Regulation; nor shall it be stayed or postponed on any account unless the amount of the demand be lodged. It shall however, be competent to any party desirous of contesting the right of the Zemindar to make the sale, whether on the ground of there having been no balance due or on any other ground (*e.g.* non-publication of notice), to sue the Zemindar for the reversal of the same, and, upon establishing a sufficient plea, to obtain a decree with full costs and damages. The purchaser shall be made a party in such suits, and upon decree passing for reversal of the sale the Court shall indemnify him against all loss at the charge of the Zemindar or person at whose suit the sale may have been made.

What are the provisions of Reg. VIII of 1819 regarding the setting aside of sale. B. L. 1907, 1908, 1917(a).

Purchaser a necessary party in such suit for reversal of sale.

(2) **Summary investigation may be applied for by defaulter; but sale not to be stayed without deposit.**—In cases, also in which a talukdar may contest the Zemindar's demand of any arrear, as specified in the notice advertised, such talukdar shall

State the different means and

be competent to apply for a summary investigation at any time within the period of notice. The Zemindar shall then be called upon to furnish his *kabuliyat* and other proofs at the shortest convenient notice in order that the award may, if possible, be made before the day appointed for sale. Such award, if so made, will, of course, regulate the ulterior process, but, if the case be still pending, the lot shall be called upon in its turn notwithstanding the suit; and, if the Zemindar or his agent in attendance insist on the demand, the sale shall be made on his responsibility, nor shall it be stayed, or the summary suit be allowed to proceed, unless the amount claimed be lodged in cash or in Govt. securities or in currency notes by the talukdar contesting the demand; and if such deposit be not made, the alleged defaulter will have no remedy but by a regular action for damages and for a reversal of the sale. (S. 14).

grounds open to defaulters to set aside sales held under Reg. VIII of 1819. B. L. 1912(a). *How should a patnidar proceed to annul a patni sale?* B. L. 1913(a). *On what grounds, by whom and by what procedure may a sale under Reg. VIII of 1819 be set aside?* B. L. 1915(b). *What is the remedy of the owner of a patni taluk if it is sold under the Regulation but not quite in accordance with the provisions laid down in it?* B.L. 1917(b). *Discuss whether a defaulting patnidar can obtain a stay of the sale before the Collector by deposit of the arrear due.* B. L. 1920(a). *What are the provisions for set-*

Note.—A sale under the Regulation may be stayed (1) by *an under-tenant* paying, on the date of the sale, the amount due before the lot is put up or by lodging a sum any day before the sale under S. 13; (2) by a patnidar who contests the arrear under cl. 2 of S. 14, lodging the amount due after the lot is put up for sale and (3) by a patnidar who does not contest the arrear summarily under cl. 2 of S. 14 paying up the amount of the demand before the date of sale under cl. 1 of Sec. 14. In cases (1) and (2) the payment must be made into Court but in case (3) the payment must be made to the zemindar. See *ante*.

A patnidar may apply for a summary investigation at any time within the period of notice, in cases where he may contest the zemindar's demand of any arrear. But the sale cannot be stayed till the summary suit is decided. (15 W. R. 560).

If the sale has actually taken place, the only remedy open to a patnidar is to bring a suit for a reversal of the sale and for damages.

Remedies of the Patnidar.—Besides the remedies by (*i*) a summary investigation before the sale and (*ii*) an appeal to the Commissioner, the defaulting patnidar or any party interested in contesting the validity of the sale (*e. g.*, an unregistered defaulter, an unregistered co-sharer of the defaulter, and under-tenure-holder

ting aside a patni sale under Reg. VIII of 1819? B. L. 1919(a) *State the rules laid down in the Patni Reg. for a suit for the reversal of a patni sale.* B. L. 1922(a) *Discuss the effects of a Patni sale held by the Collector in ignorance of a payment of all dues made by the patnidar to the Zemindar on the day previous to the sale.* B. L. 1920(b).

whose tenure is voidable on the sale, a mortgagee, etc.) may sue the zemindar and purchaser in the Civil Court for a decree for a reversal of the same on the ground of the non-publication or irregular publication of any of the notices or any other cause, *e. g.* want of arrears. Inadequecy of price is, however, no ground for setting aside a patni sale regularly held (21 W. R. 360). If the sale be set aside by the Civil Court, the Zemindar is liable to pay full costs and damages, the purchaser also being fully indemnified against all losses.

If there was no arrear of rent at the date of sale whether notice of the fact had been given to the Collector or not, the sale must be set aside. A summary enquiry as to the fact of an arrear may indeed be made under the above clause, but it is not imperative on the patnidar to demand such an enquiry ; he may reserve the question for a regular suit : and if it appear that there was no arrear, the Court is (under cl. 1, S. 14) to take care that the purchaser be indemnified against loss accruing by reason of the sale being, in consequence, set aside. (7 W. R. 219).

15. (1) **Delivery of possession to purchaser.**—So soon as the entire amount of purchase-money shall have been paid in by the purchaser at any sale made under this Regulation, such purchaser shall receive from the officers conducting the sale a certificate of such payment The purchaser shall then proceed with the certificate in question to procure a transfer to his name in the *Kachary* of the Zemindar, and upon furnishing security (if required) to the extent of half the *jama* or annual rent he shall receive the usual *amaldastak* or order for possession together with the notice to the raiyats and others to attend and pay their rents henceforward to him. The Zemindar shall also be bound to furnish access to any papers connected with the tenure purchased that may be forthcoming in his *Kachari* ; and, should he in any manner delay the transfer in his office, or refuse to give the orders for possession, notwithstanding that good and substantial security shall have been furnished or tendered on requisition, the new purchaser shall be entitled to apply direct to the Court, and he shall receive the orders for

Zemindar to give transfer on security being furnished if required.

Remedy in case of delay.

possession, and shall be put in possession, of the lands by means of the nazir, in the same manner as possession is obtained under a decree of Court: Provided, however, that, if the delay be on account of the Zemindar's contesting the sufficiency of the security tendered, the rule contained in S. 6 of this Regulation shall be observed. Proviso.

Note.—A sale held under the Patni Regulation does not require to be confirmed. It becomes final and conclusive when the whole of the purchase money is paid under S. 9 (13 C. L. J. 484).

In case of opposition to purchaser proclamation to issue from Court.

(2) **Procedure in case of opposition to purchaser.**—When a new purchaser shall proceed to take possession of the lands of his purchase, if the late incumbent himself, or the holders of tenures or assignments derived from the late incumbent, and intermediate between him and the actual cultivators, shall attempt to offer opposition, or to interfere with the collections of the new purchaser from the lands composing his purchase, the latter shall be at liberty to apply immediately to the Civil Court for the aid of public officers in obtaining possession of his just rights. A proclamation shall then issue under the seal of the Court and signature of the Judge declaring that the new incumbent having, by purchase at a sale for arrears of rent due to the Zemindar, acquired the entire rights and privileges attaching to the tenure of the late talukdar, in the state in which it was originally derived by him from the Zemindar, he alone will be recognized as entitled to make the Zemindari collections in the mofussil, and no payments made to any other individual will, on any account, be credited to the raiyats or others in any suit for rent or on any other occasion whatever when the same may be pleaded.

In case of further opposition police and public officers to aid.

(3) **Procedure in case of continued opposition.**—Should the late incumbent or his late under-tenants continue to oppose the entry of the new purchaser notwithstanding the issue of such a proclamation, or should there be reason to apprehend a breach of the peace on the part of any one, the aid of the police-officers and of all other public officers who may be at hand, and capable of affording assistance, shall be given

to the new purchaser on his presenting a written application for the same; and, in the event of any affray or breach of the peace occurring, the entire responsibility shall rest with the party opposing the lawful attempt of the purchaser to assume his rights. (S. 15).

16. **Rules for disposal of sale proceeds.**—The following rules have been enacted for the disposal of the proceeds of any sale made under the rules of this Regulation :—

One per cent to be carried to the account of Govt.

(*a*) One per cent, shall be first deducted from the net proceeds realized, and shall be carried to the account of Government for the purpose of meeting the expense of any extra establishments which it may be necessary to maintain for carrying into effect the provisions of this Regulation.

Zemindar's balance and expenses to be next made good.

But not antecedent balances.

(*b*) The balance on account of which the sale may have been made shall next be made good in full (with interest and all charges incurred in bringing the taluk to sale) to the Zemindar or other person to whom the same may be due : *Provided*, however, that no former balances, beyond those of the current year (or of that immediately expired, if the sale be at the commencement of the following year), shall be included in the demand to be thus satisfied. Such antecedent balances, if the Zemindar shall have omitted to avail himself of the process within his reach for having them satisfied at the time, will have become, in fact, mere personal debts of the individual talukdar, and must be recovered in the same way as other debts by a regular suit in the court.

Remainder to be sent to Collector's treasury, to answer claims of under-tenants.

(*c*) Any excess that may remain after satisfying the demand of the Zemindar, in the manner above described, shall be forthwith sent, by the officer conducting the sale, to the treasury of the Collector or Assistant Collector of the district to be there held in deposit to answer the claims of the talukdars of the second degree, or of others who, by assignment of the defaulter, may be at the time in possession of a valuable interest on the land composing the taluk or on any part of it.

Under-tenants free to prose-

(*d*) It shall be competent to any one conceiving himself to possess such an interest to bring forward his

claim to the price he may have paid for the same, or for a just compensation for the loss sustained by him in consequence of the sale, by instituting a regular suit at any time within two months from the date of sale. If the court shall, on investigation, consider the plaintiff's claim to be an equitable one, the court will award to the claimant either the price he may have originally paid, or the value of the interest at the time of sale, or any other amount that may be deemed just and equitable under all the circumstances.

cute for the price of their interest or compensation.

If there be more claimants than one, payment shall not be made from the deposit until the whole of the claims be settled; and, in case the value assessed upon the whole should exceed the amount in deposit, such amount shall be divided proportionately, and the remainder stand as a personal debt against the defaulter, to be realized from him by the usual process for the execution of decrees.

Payment how to be made from deposit, if many claims.

(*e*) Provided, however, that no talukdar of the second degree, or other possessor of an assigned interest upon the land of the tenure sold, who may be holding under a stipulation for the payment of an annual amount in the way of rent, shall be entitled to recover compensation for the loss of such tenure or assignment upon its becoming cancelled by sale of the superior taluk except after exhibiting proof that the whole amount of the rent demandable from himself has been paid or lodged for the purpose prior to the date of sale

Action not to lie if the under-tenant be himself in arrear at the time of sale.

Is a Sepatnidar entitled to a share in the sale proceeds after payment of the zemindar's dues? B.L. 1916(*b*).

Note.—The principle seems to be that negligence on the part of a *darpatnidar* in not fully paying the amount due by him may have contributed to the non-payment by the patnidar of the amount due by him to the Zemindar. In the case of *Ishan Chandra Rai Pandah* v. *Tarini Prosad Ghose* this provision was applied, although there was a stipulation in the contract creating the *darpatni* tenure that *darpatnidar* would be entitled to damages if the *patnidar* allowed the *patni* tenure to be sole or cancelled—it being decided that this stipulation must be held to be applicable only if the *patni* were sold owing to the sole neglect or default of the *patnidar* in not paying his rent, and could not equitably be applied where the sale resulted

from the *darpatnidar* failing to perform his contract to pay his own rent.

In case of no claims in two months or only-partial claims defaulter to receive the excess unclaimed. *A patni tenure under which there are several Darpatni tenures, the holders of some of which have paid their Darpatni rent in full to their Patnidar and some have not, put up to sale by the zemindar on the 1st Agrahayan in the Collectorate under the porvisions of Reg. VIII of 1819 for the realization of Rs. 5,000 as Patni rent; out of this amount Rs. 4,000 is due on account of the rent for the current Bengali year and Rs. 1000 on account of the previous year. Discuss*

(*f*) Should no claims upon the purchase money of a taluk sold as above be brought forward by any under-tenants or assignees within the period of two months from the date of sale, or should the amount claimed by those who may have sued not equal the entire deposit, the defaulter whose tenure may have been sold shall be at liberty to petition the Court for the amount so held in deposit, or for the excess thereof, as the case may be, and he shall receive a certificate, under the seal of the Court, as there being no claims to afford ground of detention for the whole or any part of the deposit; and upon exhibiting such certificate to the Collector, the amount set free thereby shall be paid to his receipt In the same manner, upon executing a decree passed in favor of any under-tenants or assignees, they shall receive certificates, under the seal of the Court, declaring the amount adjudged to them out of the deposit; and upon exhibiting these certificates the amount shall be paid severally to their receipts by the Collector.

Compare S. 169 (*d*) of the Bengal Tenancy Act.

(*g*) It shall be competent to any pary interested in a deposit to withdraw the whole or any part thereof on substituting Government securities bearing interest in lieu of the money so held in deposit; such securities to be taken at the rate of discount or premium of the day. (S. 17).

Note.—The rights of mortgagee of patni taluks are not dealt with by this Regulation. But the surplus sale proceeds should be considered to represent the mortgaged property and a mortgagee will be entitled to be paid out from the sale proceeds in the first instance therefrom. (29 Cal. 241).

Antecedent balances due by the patnidar to the Zemindar, namely, those that are not covered by the summary proceedings under the Regulation, become mere *personal* debts of the individual talukdars and must be recovered in the way as other debts by a regular suit in the Civil Court. (16 C. W. N. 804) and not as rents recoverable under the provisions of the tenancy law. (37

Cal. 747). Arrears that have accrued subsequent to the application under the Regulation are a charge on the taluk and the purchaser is bound to pay the same. He can not excuse himself by pleading that he has taken possession after a part of the arrears accrued.

the legality or otherwise of the zemindar's action.

A *sepatnidar* is not entitled to a share of the proceeds of a sale of the patni for arrears of rent held under Reg. VIII of 1819. S. 17, cl. 4 mentions a talukdar of second degree but does not mention the talukdar of the *third* degree (sepatnidar) (3 C. W. N. 60).

What persons can save the Patni from being sold, and upon payment of what amount?

In *Jotindra Mohan Tagore* vs. *Jorao Kumari* (33 Cal. 140) it has been *held* that if in a patni lease there is a stipulation that the patnidar would pay the Govt. revenue on behalf of the Zemindar, the Govt. revenue is not "money payable to the landlord", and therefore is not "rent" within the meaning of S. 3 cl. (5) of the B. T. Act and consequently it cannot be recovered by summary sale under the provisions of Regulation VIII of 1819. There is, however, a diversity of judicial opinion on this point. Rent presupposes the relation of landlord and tenant. It must be payable by the tanant to his landlord. S. 3, Sub-sec. (5) of the B. T. Act defines "rent" as "whatever is lawfully payable or deliverable in money or kind by a tanant *to his landlord* on account of the use or occupation of the land held by the tenant." The question sometimes arises as to whether a sum of money payable by a tenant not to his landlord but to a third person is rent. In some cases, it has been decided that such payment is rent while in other cases, the contrary view has been held. For the former view, *see* 2 C. W. N. 455; 27 Cal. 67 F. B., and for the latter view *see* 11 Cal. 221, 32 Cal. 169 and 33 Cal. 140.

What rights, if any arise in favour of the payee upon payment of such amount?

The rent of a patni falls into arrears for three years. Can the Zemindar realise the whole amount by sale under Reg. VIII of 1819? B. L. 1916(*b*).

In a patni lease there is a stipulation that the patnidar will pay the Govt. revenue on behalf of the zemindar. On failure by the patnidar to pay the same, can the zemindar recover the amount by a sale of the patni under Reg. 8 of 1819? B. L. 1920(*a*), 1925(*b*), '26(*a*).

Bengal Land Revenue Sales Act.

(XI OF 1859)

1. **Objects of the Act.**—The purposes for which Act XI of 1859 was passed were as follows :—

(1) To afford reasonable security to persons who

What were the purposes for which the Revenue sale Law was passed? B. L. 1914(*b*).

What considerations led to the enactment of Act XI of 1859? B. L. 1918(*a*).

State briefly the complications and causes that led to the passing of Act XI of 1859? B. L. 1912(*a*).

State some of the principal objects for which the Revenue Sale Law (Act XI of 1859) was passed. B. L. 1919(*a*).

"The Revenue Sale Law (Act XI of 1859) is to a great extent a remedial law passed for the benefit of the subject, and in order to relax the stringency of the former Law whereby the Crown was empowered to sell estates for non-payment of

have liens upon estates, and who pay the money necessary to protect such estates from sale for arrears of revenue :

(2) To afford sharers in estates, who duly pay their shares of the sudder jumma of their estates, easy means of protecting their estates from sale by reason of the default of their co-sharers :

(3) To afford land-holders, particularly absentees, facilities in guarding against the accidental sale of their estates for arrears of revenue by reason of the neglect or fraud of their agents :

(4) To provide for the voluntary registration of dependent taluks existing at the time of the Permanent Settlement :

(5) To protect the holders of registered under-tenures since the Permanent Settlement and not resumable by the grantor or their representatives, from loss by the avoidance of their tenures by the sale of the estates ; and to give absolute security to such tenures by special registry when shewn to be held at a rent sufficient for the security of the revenue :

(6) To discontinue the practice of obtaining the previous sanction of the Board of Revenue to sales of estates for arrears of revenue, or other demands of Government, in the province of Cuttack

First Object.—When an estate had been mortgaged or otherwise hypothecated for the re-payment of money, if it were suffered to fall into arrear and so to be sold, through either the carelessness or fraud of the proprietor, the creditor lost his security, as the sale cleared away incumbrances. He might indeed bring a suit to enforce his lien against any balance of purchase-money which remained in the Collector's hands, but as this could not be rendered available until he had got a decree, the defaulting proprietor was generally able to withdraw it before it could be attached in execution of the lien. So long as this risk was possible, it was natural that revenue-paying estates had a depreciated value in the market as security for the re-payment of money, and individual cases of hardship pointed to the advisability of amending the law. The necessary remedy was afforded by allowing the creditor to deposit the

arrear of revenue and so save the estate from sale. If he afterwards proved before a competent court, that this deposit was necessary in order to protect any lien he had on the estate, a share, or part thereof, the amount so deposited was to be added to the amount of the original lien. *revenue." Explain.* B. L. 1924(*b*).

Second Object.—The system of joint ownership, which is the normal state of every Hindu family, and which exists not infrequently amongst the Mahomedans, is occasionally productive of inconvenient results, provident and thrifty sharers being made to suffer the consequence of improvidence and extravagance of their co-sharers. Thus where one of several co-sharers in an estate failed to pay his quota of the revenue and so brought the estate into arrear, the other co-sharers had no alternative but to pay his quota out of their own pockets, if they would avoid the loss of their own shares, which would be result of a sale. To obviate this hardship, a recorded sharer of a joint estate, held in common tenancy or whose share consists of a specific portion of the land, may now apply to the Collector to be allowed to pay his share of the Government revenue separately. If after publication of notice no other recorded sharer make any objection within six weeks, the Collector is to open a separate account with the applicant, and to credit separately to his share all payments made by him. (Ss. 13, 11). If any recorded proprietor object that the applicant has no right to the share claimed by him, or that his interest is less than stated, or where the share consists of a specific portion of land, that the amount of revenue thereupon is incorrectly given, the Collector is to suspend proceedings, and refer the parties to the Civil Court for a judicial determination of the point in dispute. (S. 12).

In the event of a sale where a separate account has been opened for one or more shares, that share or those shares from which the arrear is due, are alone to be put up in the first instance, notice being given in the sale advertisement of the intention of excluding the share or shares from which no arrear is due, and such share or shares are to constitute one integral estate, the share or shares sold being charged with their separate portion of the revenue (S. 13). If the highest bid, made for the share or shares put up in the first instance be insufficient to meet the arrear, the Collector is to stop the

sale and to declare that the whole estate will be put up at a future day, unless the other recorded sharer or sharers, or some of them, shall within ten days purchase the share in arrear by paying the whole arrear due from such share. If such purchase be completed, the purchaser is to get the usual certificate and to have the same rights as if he had purchased at a sale. If the purchase be not completed, the entire estate is to be sold after the usual notification (S. 14). Outsiders who purchase shares under these provisions (*i.e.* Ss. 13 and 14) acquire them subject to all incumbrances, and do not acquire any rights which were not possessed by the previous owners. (S. 54).

Third Object.—In order to afford landholders, particularly absentees, facilities in guarding against the accidental sale of their estates for arrears of revenue by reason of the neglect or fraud of their agents, recorded proprietors or co-partners of estates are empowered to deposit with the Collector money or Government securities endorsed and made payable to the order of the Collector, at the same time signing an agreement pledging the same to Govt. by way of security for the revenue of the entire estate, and authorizing the Collector to apply them to the payment of any revenue that may become due therefrom. In case of arrear, the Collector is to apply to its payment the money and any interest due upon the securities, and, if a balance then remain, he is to sell the securities and apply the proceeding to its discharge. So long as funds are thus in hand to cover any arrear that may accrue the estate is exempt from sale. Monies and securities so deposited are exempt from attachment otherwise than in execution of a decree of the Civil Court.

Fourth and Fifth Objects.—The fourth and fifth objects may be considered together. The law provides for two sets of registers, one for *common registry*, the other for *special registry*. *Common registry* secures the tenures and farms therein against any auction purchaser at a sale for arrears of revenue *except Government*. Special registry secure against Government also. (Ss. 38-50.)

Application of the Act.—S. 62 of the Act provides that "the operation of this Act shall be confined to such parts of the Lower Provinces in the Presidency of Fort William in Bengal as are or

shall be subject to the general Regulations of that Presidency." The Act has been declared to apply to the whole of Bengal except the Scheduled Districts. It has also been extended to the Santhal Paraganas, West Jalpaiguri, Darjeeling district, Western Duars, and the districts of Hazaribag, Lohardaga and Manbhoom, Pergana Dhalbhum and the Kolhan. The Act does not apply to Chittagong Hill Tracts and Assam.

Definitions (1) **Collector.**—The word "Collector" includes a Deputy Collector or other officer exercising, by the authority of Govt., the powers of a Collector or Deputy Collector. (S. 61).

(2) **Proprietor.**—The word "Proprietor" includes any tenant by whom any estate or tenure is held directly under Government. (S. 1, Act VII of 1868).

(3) **Revenue.**—The word "revenue" includes every sum annually payable to Government by the proprietor of any estate or tenure in respect thereof, and every sum payable to Govt. in respect of *Takavi* or of any money advanced by Govt to proprietors of land for making or repairing improvements, reservoirs, or water-courses or other improvements on the land held by them. (*Ibid*). For distinction between *revenue* and *rent*, *vide* the Author's Students' Bengal Tenancy Act, 5th edition, p. 19. "The term *land-revenue* may be broadly defined as the amount of money or quantity of produce payable to the State by persons in occupation of or otherwise interested in, land. Modern terminology draws a line of distinction between *revenue* and *rent*. *Revenue* is used to denote the tax imposed by the State upon the owners of land and *rent* is used to designate the amount payable by the tenant of land to its owner or in cases in which there are two or more degrees of subinfudation to the owner of the next higher grade of interest. Rent is essentially in the nature of a price payable for the use and occupation of land, while revenue partakes of the character of a royalty payable by persons interested in land, whether in actual occupation or not." (*Guha's Land-System*).

(4) **Estate.**—The word "Estate" means any land or share in land subject to the payment to Government of an annual sum in respect of which the name of a proprietor is entered on the register known as the General Register of all revenue-paying estates or in

respect of which a separate account may, in pursuance of S. 10 or 11 of Act XI of 1859, have been opened. *(Ibid).*

(5) **Tenure.**—The word "tenure" includes all interests in land whether rent-paying or lakhiraj (other than estates as above defined) and all fisheries, which, by the terms of the grants creating the same or by the custom of the country, are transferable, whether such tenures are resumable or not, and whether the right of selling or bringing them to sale for an arrear of rent may or may not have been specially reserved by stipulation in any instrument. *(Ibid).*

Define Arrears of Revenue under the Bengal Law Revenue Sales Act (XI of 1859).
B. L. 1926(*b*).

2. **Arrear of Revenue :**—If the whole or a portion of a kist or instalment of any month of the era, according to which the settlement and kistbandi of any mahal have been regulated, be unpaid on the first of the following month of such era, the sum so remaining unpaid shall be considered an 'arrear of revenue" (S. 2).

Arrear of Revenue.—S. 3 of this Act (see *infra*) empowers the Board of Revenue to determine the dates on which the arrears of revenue should be paid in each district under their jurisdiction. If any quaterly instalment, as determined by the Board in the case of a whole estate or of an estate carved out by partition, is not paid up before the sunset of the latest day fixed, the amount so unpaid is considered to be an arrear. In such a case the estate practically lapses, and the defaulter has no right to bar, or interfere with, the sale by subsequent payment or tender of payment. But whatever is sold under Act XI of 1859 can only be sold for arrears of Government revenue, and unless such arrears can be shown to have been due, any sale held under the law is void, inoperative and without legal effect. (15 W. R. 141 ; 13 W. R. 381 ; 22 C. L. J. 525).

Payment of Revenue by Postal Money Order.—Government revenue is, as a rule, paid into the treasury directly by the Zemindar or his representative. Postal agencies are also sometimes employed. But it should be observed that payment to the post office is not equivalent to payment to the Collector and that the post office cannot be considered to be the agent of the Collector, for two reasons : In the first place, at the foot of the revenue money-order form, rule 6 runs thus :—Remittances of land-revenue should be made in sufficient time before the *kist* day to ensure their reach-

ing the treasury on or before that day and remitters are advised, to allow ample margin of time on this account." This rule implies that it is payment to the Collector by the post office that acts as an acquittance and not payment to the post office. The second reason is that post office is not authorised by the Government to give a valid receipt for the amount of revenue. It can give receipt for the money that comes into its hands at the risk of the remitter, (*per* Rampini and Wilkins, J. J. in 4 C. W. N. 1903). Where, therefore, the revenue of an estate was sent through the post office by a revenue money-order in sufficient time, but it did not, owing to the negligence of the post office, reach the Collector in due time, and the estate was sold for arrears of revenue, it was *held* that the sale was rightly held. (4 C. W. N. 103). Where, however, the revenue money-order reached the Collector in time but the *Tauzi* number and the name of the registered owner being wrongly given the amount was credited to another estate, and the estate, for which the money had been sent, was sold for arrears of revenue, it was *held* that, under rule 29 of the Land Revenue Rules, it was the duty of the Collector to give the remitter an opportunity to rectify the mistakes made by him: an endorsement on the back of the money-order to the effect that the remitter would be liable for any mistake and that the Collectorate would be guided by the *Tauzi* number did not relieve it from that duty. (32 Cal. 229; 42 I. C. 500).

3. (*a*) **Latest day of payment of Revenue.**—The Board of Revenue shall determine upon what dates all *arrears of revenue* (and all demands, which are directed to be realised in the same manner as arrears of revenue) shall be paid up in each district under their jurisdiction, in default of which payment, the estates in arrear in those districts except as hereinafter provided shall be sold at public auction to the highest bidder.

(*b*) **Notification of the latest day of payment.**—The Board of Revenue shall give notice of the dates so fixed in the official Gazette and shall direct corresponding publication to be made, as far as regards each district, in the language of that district, in the office of the Collector or other officer duly authorised

to hold sales under this Act, in the Courts of the Judge, Magistrate (or Joint Magistrate, as the case may be), and Munsiffs and at every thana of that district, and the dates so fixed shall not be changed except by the said Board by advertisement and notification, in the manner above described to be issued at least three months before the close of the official year preceding that in which the new date is, or dates are, to take effect. (S. 3).

Note.—When the latest day for the payment of Govt. revenue falls on a Sunday or a holiday, being a day on which the Collector's office is authorised to be closed, the first open day after such Sunday or holiday is to be taken as the latest day.

Latest day of payment—The latest day of payment as mentioned in S. 3, is the turning point and all the machinery of the Act for sales seems to hinge on it. (7 C. W. N. 377).

A Zemindari is advertised for sale for arrears of Govt. revenue. Is there any means to stop the sale? B.L. 1913 (*a*).

Sunset law—S. 3 of the Act empowers the Boards of Revenue to determine upon what dates arrears of revenue shall be paid in each district under their jurisdiction. If any quarterly instalment is not paid before the sunset of the latest day thus fixed the estate practically lapses and the defaulter has no right to bar or interfere with the sale by subsequent payment (21 Cal. 844).

"**Except as hereinafter.**"—*See* Secs. 5 and 17 *infra*.

Special notice necessary in certain cases.

4. **Proviso in case of certain descriptions of arrears**—No estate, and no share or interest in any estate, shall be sold for recovery of arrears or demands of the descriptions mentioned below otherwise than after a notification in the language of the district, specifying the nature and amount of the arrear or demand, and the latest date on which payment thereof shall be received, shall have been affixed for a period not less than 15 clear days preceding the days fixed for payment according to S 3. of this Act, in the office of the Collector or other officer duly authorised to hold sales under this Act, in the Court of the Judge within whose jurisdiction the land advertised lies, and in the Munsiff's Court and police-thana of the division in which the estate or share of an estate to which the notification relates is situated; or, if the estate or share of an estate be situated within the jurisdiction of more than one Munsiff's Court or police-thana, in some one or

more of such courts or thanas : and also at the Kachari of the malguzar or owner of the estate or share of an estate, or some conspicuous place upon the estate or share of an estate, the same to be certified by the peon or other person employed for the purpose :—

What steps are required to be taken by Collector to bring an estate to sale for arrears other than those of the current year immediately preceding? R. L. 1905.

(1) Arrears other than those of the current year or of the year immediately preceding.

(2) Arrears due on account of estates other than that to be sold.

(3) Arrears of estate under attachment by order of any judicial authority, or managed by the Collector in accordance with such order.

(4) Arrears due on account of *takkavi*, *pulbandi*, or other demands not being land-revenue, but recoverable by the same process as arrears of land-revenue. (S. 5).

Note.—The notification under this section is not a notice for the sale of an estate for arrears of revenue on a specified day or at a specified hour nor does it invite bidders. It is meant only to be affixed, at least 15 days before the day fixed for the sale, for the payment of revenue. (I. C. L. J. 555). In other words it is simply a public call on the debtor to pay his debt by a fixed date. The issue of a notification under this section is imperative and its non-service is a material irregularity for which the sale for arrears may be set aside, "To sell a man's estates for arrears after lulling him into a false sense of security, by failure to give notice which the law prescribes as a condition precedent of sale, is an injury in itself and a very material injury and one amply sufficient to warrant a court in annulling a sale under S. 33, Act IX of 1859." (*Per* Phear. J. in 15 W. R. 423). But a contrary view has been expressed by Rampini and Bodilly J. J. in 32 Cal. 110 at p. 116 where it has been held that the issue of a notice under S. 5 of this Act is not a condition precedent to the sale taking place, the non-compliance with which makes the sale no sale as in the case of its being found that there were no arrears for which a sale could legally be held. The non-issue of such a notice is only an irregularity. The weight of authority, however, points to the contrary view. Thus, in 1 C. L. J. 565, it has been held that the proceedings of the Collector would be materially irregular and illegal within the meaning of

S. 33 of this Act, if S. 5 were altogether ignored. See also 9 Cal. 271 ; 11 Cal. 200 and 2 C. W. N. 360. If, however, the Collector issues a notice under S. 6 instead of under S. 5 it is a mere irregularity which does not render the sale a nullity. (6 C. L. J. 99). The omission to issue the notification prescribed by S. 5. is not remedied by the issue of the certificate of sale under S. 28 of the Act and Civil Courts are not precluded by S. 8 of Act VII of 1868 from investigating the question. S. 8 of Act VII of 1868 may be invoked if objections are made to the due service and posting of all or any of the notices required by this Act including the notices under S. 5, but the section has no application when no order is passed for the issuing of such notices and none are actually issued. Sec. 8 of Act VII of 1868 does not apply to a case in which no notification under S. 5 is published at all. (17 Cal. 392). The non-issue of a notice under S. 5. must, however, be specified in the appeal to the Commissioner, and, if not so specified cannot be urged in a subsequent suit. (8 C. W. N. 757).

Current year—means the year in which the latest date for payment falls as fixed under S. 3 and not the year in which sale of the property ultimately takes place. (7 C. W. N. 377, 5 C. L. J. 45).

Takavi—means advances of money made by Government to Zemindars for improvement of their lands.

Pulbandi—means money advanced for keeping bridges, embankments, etc. in repairs.

Clause (3)—The object of this clause is to give special protection in cases where the circumstances are such that, without any omission on the part of the person interested in protecting the estate, there might be delay in the payment of the revenue ; and, it is perfectly obvious that this difficulty occurs in all cases where any portion of the estate liable for Govt. revenue is under attachment. If any portion of an estate is under attachment for debt, the owner of that portion is not always the person really interested in the payment of the revenue, but either the person who has attached it or the co-sharer. When it has been put under the control of a manager appointed by the Civil Court, the owner of the share, though in that case he is probably interested in the payment of the revenue, has not the means of paying it, the whole rents

and profits of the estate being taken out of his control and handed over to another person; and that difficulty arises just as much whether the estate is under management of a person appointed by, and wholly irresponsible to, the Civil Court, or whether it is under the management of a Collector or other Revenue-officer. (13 W. R. 423).

The attachment must be made at least 15 days before the last day of payment for which it is sought to bring the estate to sale. Cl. (3) would not, therefore, apply to a case in which the attachment was made after the last day of payment, and after the estate had become liable to sale for arrears of Government revenue (22 Cal. 738).

The attachment must be made under judicial authority and it must be proved that there had been an actual attachment effected strictly in accordance with the requirements of S. 274 C. P. C.

An attachment under the certificate procedure is not an attachment within the meaning of this clause. (13 Cal. 209). It is immaterial whether the attachment is or is not subsisting *at the time of the sale*. There is nothing in S. 5 which indicated that the property sold for arrears should be under attachment at the time of the sale. If a property was in arrear and was also under attachment by order of any judicial authority, the Collector could not, having regard to the provisions of S. 5, legally sell it without first publishing a notification of the arrear not less than 15 clear days prior to the latest day of payment. Such a sale was *ultra vires* and therefore void. (17 Cal. 398).

Issue of notifications of sale.

5. Notification of sale to be issued and no tender after latest day of payment to stop sale. —The Collector or other officer duly authorised to hold sale under this Act shall, as soon as possible after the latest day of payment fixed in the manner prescribed in S. 3 of this Act, issue notifications in the language of the district to be affixed in his own office, and in the Court of the Judge of the district specifying the estates or shares of estates which will be sold as aforesaid, and the day on which the sale of the same will commence, which day shall not be less than 30 clear days from the date of affixing the notification in the office of the

What preliminaries have to be observed

before an estate can be sold under Act XI of 1859? B. L. 1918(*a*).

Collector or other officer as aforesaid. If the Government revenue of any estate or share of an estate to be sold exceed the sum of Rs. 500, a notification of the sale of such estate or share of an estate shall be published in the official Gazette. Except as hereinafter provided, all estates or shares of estates so specified shall, on the day notified for sale, or on the day or days following, be put up to auction by and in the presence of the Collector or officer as aforesaid, and shall be sold to the highest bidder: And no payment or tender of payment after the sunset of the latest day shall bar or interfere with the sale either at the time of sale or after its conclusion. (S 6).

Tender after latest day of payment not to stop sale.

Note.—The object of the section is to give reasonable publicity to the sale and its real meaning is that this should be done by means of affixing the prescribed notices strictly in time or not less than 30 clear days before the date fixed for the sale. Where the notification required by this section has not been affixed clear thirty days before the date of sale mentioned in it, the Collector ceases to have any jurisdiction to put the property up to sale. A notification by the Collector under S. 6, Act XI of 1859, fixing the 31st May, 1878, as the date for holding the sale, was affixed in the particular places mentioned in the section on the 2nd May, 1878. Subsequently, the 31st May being ascertained to be a holiday and the 1st of June being also a holiday, the Collector purporting to Act under S. 20 of the Act, issued a notification on the 25th or 26th of May, postponing the sale to the 2nd of June. On that day the sale was held and the Commissioner having upheld it on appeal a certificate of title under S. 28 was given to the purchaser. In a suit to set aside the sale, it was held that, inasmuch as the notification under S. 6 had not been affixed 30 days before the day fixed by it for holding the sale, the requirements of the section had not been complied with. (9 Cal. 271). It is to be observed that non-compliance with the provisions of S. 6, Act IX of 1859, is not a mere irregularity and is certainly not one of those errors in procedure which are intended to be cured under S. 8, Act VII 1868, by the purchaser having obtained his certificate. (11 Cal. 200). In the above case, the day notified being less than 30 days from the date of affixing

the notice, was one on which the Collector had no authority to hold the sale, and as the sale on that day would have been illegal no adjournment of the sale to any subsequent day could have the effect of legalizing the proceedings. If the Collector had no right to hold the sale, the error, which he committed, was not a mere irregularity, but one which rendered the proceedings absolutely void. (11 Cal. 200 ; 7 C. W. N. 377). The contrary view has, however, been taken in 16 C. W. N. 227 where it has been *held* that the fact that the proclamation of sale was affixed in the Collectorate less than thirty days from the date of sale, in contravention of the provision of S. 6, did not make a sale a nullity.

Contents of the Notification.—The section lays down that the notification is to specify only (1) the estates or shares of estates which will be sold, and (2) the day on which the sale will commence. The specification should be such as to inform intending purchasers the precise property that is to be sold and to ensure thereby a reasonable competition. The question as to whether in any particular instance, the notification sufficiently specifies the estate or share to be sold must depend upon the terms of the notification in each case. The section does not require that the name of the defaulter or proprietor should be inserted in the notification, the reason being that the sale conveys the estate or a share of an estate in arrear and not the right, title and interest of the defaulter. Thus, where a notification under S. 6 did not contain the names of all the recorded proprietors, but the name of one of them only, it was held that the circumstances did not amount to an irregularity within the meaning of S. 33, Act XI of 1859 (9 Cal 591 : 13 Cal. 408 ; 32 Cal. 110). In *Rajani Dasi* v *Gonesh Prosad* (37 Cal. 407), however, where it was found that the mis-statement of the proprietor in the sale notification had the effect of misleading intending bidders, it was *held* that such incorrect entry amounted to an irregularity such as is contemplated by S. 33 of Act IX of 1839.

Tender after the latest day of payment.—Where an arrear of revenue has not been paid within the latest day fixed for payment, no payment or tender of payment made after sunset of such date can bar or interfere with the sale either at the time of the sale or after its conclusion. Such a payment does not entitle the pro-

prietors to claim as a matter of right that the liability of the estate to be put up to auction has terminated. Thus, in a suit to set aside a sale for arrears of revenue held on the 26th March 1879, it was alleged, as one of the grounds for setting aside the sale, that arrears had been paid into the Collector's treasury on the previous day and a receipt granted for it, and that according to the custom which had prevailed in the Collectorate of the district, on payment of arrears being so made property had always been exempted from sale but it was *held* that the sale was valid as no order had been made by the Collector in writing exempting the property from sale under S. 18, mere payment of arrears into the treasury, without such an order not having in itself the effect of exempting the property from sale. (13 C. L. R. 1) Where again the revenue of an estate is sent through the post-office by a money-order in sufficient time but it does not reach the Collector in due time, as result of which the estate is sold for arrears of revenue, the sale is legally held.

6. **Notice to raiyats, etc.**—Whenever an estate or share of an estate is notified for sale as provided by S. 6 of this Act, the Collector or other officer as aforesaid shall affix a proclamation in the language of the district, (1) in his own office and as soon as thereafter as may be, (2) in the Munsiff's Court and (3) police-thanas within which the estate or share of an estate or any part of it, is situated, and also (4) at the Kachari of the malguzar or the owner of the estate or share of an estate or at some conspicuous place upon the estate or share of an estate, forbidding the raiyats and under-tenants to pay to the defaulting proprietor any rent which has fallen due after the day fixed for the last day of payment, on pain of not being entitled to credit in their accounts with the purchaser for any sums so paid.* (S. 7).

Note.—The object of issuing a notice under this section is not to give proprietors notice of the fact that the estate is to be put up to sale ; it is to prevent the tenants from paying rent to the defaulting proprietor. The view that the notice under S. 7 is intended for

* The defaulter is, however, entitled to all the rents of the estate upto the latest day of payment of the revenue. (*Vide* S. 58). But where a tenant pays to the defaulter any rent due after the day fixed for the last day of payment, he does so at his own risk.

the protection either of the tenants or of the purchasers at the revenue sale or perhaps of both, receives considerable support from the fact that the title of the auction purchaser takes effect, as is expressly stated in the form of the certificate of title given under S. 28 from the day after that fixed as the last day of payment ; it is obvious, therefore, that, as the title of the purchaser relates back to the day following the day of default, it is essential that, as soon as the default is made the raiyats and the under-tenants should be apprised that the defaulting proprietor has no claim to any rent that accrue after the default has been made." (Mr Mukherji J. in 2 C. L. J. 325).

Omission to publish notice under this section does not vitiate a sale. The object of the notification under S. 7 being to give notice to the raiyats not to pay rent to the defaulting Zemindars, non-service of such notification could not be a ground for invalidating the title of the auction-purchaser. (13 C. L. R. 1 ; 30 Cal. 1 ; 34 Cal. 381). In the absence of proof that the plaintiff has sustained substantial injury on account of the omission of the notice under S. 7, such omission would not invalidate a sale under Act XI of 1859. (21 Cal. 354). It has further been held that the notice required by S. 7 to be served in the mahal being intended to be a notice to the raiyats not to pay their rent to the defaulting Zemindars, the omission to issue such notice could not be connected with any substantial injury arising from the sale. (2 C. L. J. 325). It should be observed that after issue of the sale-certificate to the purchaser, the provisions of Sec. 8, Act VII of 1868, would bar the raising of the question whether the notice under S. 7 had been duly posted and served or not. (30 Cal. 1).

7. **Claims of defaulter against Government not to invalidate sale.**—No claim to abatement or remission of revenue unless the same shall have been allowed by the authority of Government and no private demand or cause of action whatever, held or supposed to be held, by any defaulter against Government shall bar or render void or voidable a sale under this Act ; nor shall the plea, that the money belonging to the defaulter, and sufficient to pay the arrear of revenue due, was in the Collector's hands, bar or render void or

voidable a sale, under this Act, unless such money stand in the defaulter's name alone, and without dispute, and unless after application is made by the defaulter, or after the written agreement provided for in Sec. 15 of this Act, the Collector shall have neglected or refused on insufficient grounds to transfer it in payment of the arrear of revenue due. (S. 8).

Note.—Possession by Collector of money, belonging to the defaulter, not indisputably placed to his credit can not save the estate from being sold. (25 Cal. 833). A deposit in Collectorate to the credit of the proprietor or even the estate in arrear, sufficient to cover the amount of revenue payable to Government is not enough to exempt the estate from sale, unless the Collector has been asked by special petition, on or before the latest day to appropriate the amount in deposit to the satisfaction of the amount payable as revenue. The existence of such deposit in the Collectorate, or the fact that the arrear was small and that it was not paid in owing to inadvertence or mistake may only be a reason for inducing the Collector or Commissioner of Revenue to grant exemption from sale and it may also be a good reason for setting aside the sale when the sale has taken place on the ground of hardship or injustice (S. 26), but in case of the deposit of money or of Government securities made payable to the order of the Collector the provision of S. 15 applies and the estate may be exempted from sale.

8. **Estates not to be sold for certain arrears.** —(*a*) No estate shall be liable to sale for the recovery of arrears which have accrued during the period of its being under the management of the Court of Wards.*

(*b*) No estate, the sole property of a minor or minors, and descended to him or them by the regular course of inheritance duly notified to the Collector for the information of the Court of Wards, but of which the Court of Wards has not assumed the management, shall be sold for arrears of revenue accruing subsequently to his or their succession to the same until the minor or minors, or one of them, shall have attained the full age of 18 years.*

* These two clauses have been repealed by Ben. Act 3 of 1881.

(*c*) No estate held under attchment by the Revenue authorities *otherwise than by order of a judicial authority*, shall be liable to sale for arrears accruing whilst it was held under attachment.

(*d*) And no estate held under attachment or managed by a Revenue officer in pursuance of an order of a judicial authority shall be liable to sale for the recovery of arrears of revenue accruing during the period of such attachment or management until after the end of the year in which such arrears accrued. (S. 17).

Note.—The object of this section is to prevent property from being sold for arrears of revenue, which had accrued due while it was in the hands of the Revenue authorities (34 Cal. 381). It must be observed that the benefit conferred by S. 17 is a totally different one from that conferred by S. 5. The former section does not refer to notices to be given, but to certain cases in which estates are not liable to sale at all. (12 B. L. R. 297). The distinction between the larger concession granted under this section and those afforded by S. 5 should be noted. These concessions are founded on the theory that there can be no conceivable case of balance due from an estate on account of a period of attachment or management by Revenue authorities, except by reasons of some fault, or neglect, or oversight committed by the officers of Government and consequent, that it is always in the power of Government or its officers, under powers given them by the existing law, to prevent the occurrence of such balances. (Roy's Revenue Sale Law, p. 77.)

Collector empowered to exempt an estate from sale at any time before the sale commenced. Commissioner may do the same by a special order to the Collector and a sale after the

9 **Power to exempt from sale.**—It shall be competent to the Collector or other officer duly authorised to hold sales under this Act, at any time before the sale of an estate or share of an estate shall have commenced, to exempt such estate or share from sale; and, in like manner, it shall be competent to the Commissioner of Revenue, at any time before the sale of an estate or share of an estate shall have commenced, to exempt such estate or share of an estate from sale, by a special order to the Collector or other officer as aforesaid to that effect in each case; and no such sale shall be legal if held after the receipt of such order of exemption.

Provided, however that the Collector or other officer

receipt of such order to be illegal. Reason for granting exemption to be recorded.

as aforesaid or the Commissioner, shall duly record in a proceeding the reason for granting such exemption, and provided also that an order for exemption, so issued by the Commissioner shall not affect the legality of a sale which may have taken place before the receipt by the Collector or other officer as aforesaid of the order of exemption. (S. 18).

Note.—An order of exemption made by a Collector under S. 18 to be operative must be *absolute* and *unconditional* and must be *in writing*. Where a defaulting proprietor tendered the arrears before the day of sale and prayed that the amount be accepted and the property released from sale, whereupon ordered: "I exempt this estate from sale, provided the arrears are paid before sale"; it was *held* that the order is not such as is intended by S. 18. (17 Cal. 809 P. C.). In this case, their Lordships of the Privy Council observed: "It should be an absolute exemption, not an order which may have effect as an exemption or not according to what may happen or be due afterwards. The section says it shall be competent to the Collector or other officer, at any time before the sale, to exempt the estate from sale. The Collector is to record in a proceeding the reason for granting exemption. Although this may be done at any time, the reason should exist at the time the exemption is granted, and not be a fact which may happen afterwards, or an act which may or may not be performed." Similarly, where in a suit to set aside a sale for arrears of Govt. revenue held on the 26th March, 1879, it was alleged, as one of the grounds for setting aside the sale, that the arrear had been paid into the Collector's treasury on the previous day and a receipt granted for them, and that according to the custom prevailing in the Collectorate of the district on payment of arrears being so made, the property had always been exempted from sale, it was *held* that the sale was valid, as no order had been made by the Collector in writing exempting the property from sale under S. 18, mere payment of arrears into the treasury without an order under S. 18, not having in itself the effect of exempting the property from sale (13 C. L. R. 1).

What preventive accion can a tenure-holder take to

10, **Deposit by persons, other than proprietors, to save estate from sale.**—(*a*) The Collector or other officer as aforesaid shall, at any time before sun-

set of the latest day of payment, determined according to S. 3 of this Act, receive as a deposit from any person, not being a proprietor of the estate or share of an estate in arrear, the amount of the arrear of revenue due, to be credited in payment of the arrear at sunset as aforesaid, unless, before that time, the arrear shall have been paid by a defaulting proprietor of the estate.

(*b*) And, in case the person so depositing, whose money shall have been credited in the manner aforesaid, shall be a party in a suit pending before a Court of Justice for the possession of the estate or share from which the arrear is due, or any part thereof, it shall be competent to the said Court to order the said party to be put into temporary possession of the said estate or share, or part thereof, subject to the rules in force for taking security in the cases of parties in civil suits.

(*c*) And, if the persons so depositing, whose money shall have been credited as aforesaid, shall prove before a competent Civil Court, that the deposit was made in order to protect an interest of the said person, which have been endangered or damaged by the sale, or which he believed in good faith, would have been endangered or damaged by the sale, he shall be entitled to recover the amount of the deposit, with or without interest, as such a Court may determine from the defaulting proprietor.

(*d*) And, if the party so depositing, whose money shall have been credited as aforesaid, shall prove before such a Court that the deposit was necessary in order to protect any lien he had on the estate or share or part thereof, the amount so credited shall be added to the amount of the original lien. (S. 9).

Note.—The provisions of this section have been introduced in order to protect the interest of person who had contingent interest in an estate such as mortgagees and under-tenants who might perhaps have expended capital on their land. One of the objects for which Act XI of 1859, was passed was, as indicated in the Preamble, to give security to persons who have liens upon estates and who paid money necessary to protect such estates from sale. This object is secured by S. 9 of the Act which authorises the

avert the risks of a Revenue sale? B.L. '10 (*a*). *What risks and liabilities, if any, do proprietors and tenure-holders under them incur respectively. by the latest date prescribed under the provisions of Act XI of 1859 for payment of Govt. revenue being allowed to pass without payment of such revenue? What preventive action can such of these classes of persons take to avert such risks and liabilities, if any?* B. L. 1910(*a*). *State what rights a proprietor or a tenure-holder under him, has to avert a sale for arrears of Govt. revenue firstly, prior to the expiry of the last date fixed for such payment and secondly, after the expiry of such*

date and before the actual sale by the Collector takes place. What is the object of the Legislature in allowing an under-tenure-holder to interfere in the matter of payment of Govt. revenue; and if he pays the Govt. revenue upon a case being made out for such payment, what rights does he acquire against his superior landlord in the matter of recouping himself? B.L. 1911(*b*). *Who are the different persons who may, under Act XI of 1859, protect the property from sale by depositing the arrears due and what are their rights resulting from such payment?* B.L. 1915(*b*).

Collector to receive deposit from any person other than the proprietor of the estate or share of an estate in arrear to credit them in payment of arrears and enables the depositor to recover the amount in case of need, by a suit in the Civil Court and pending recovery, to obtain temporary possession of the estate. (*Cf.* S. 171 B. T. Act.). Before the enactment of these provisions, they were absolutely without a remedy if a Zemindar chose to let the estate fall into arrear for the purpose of bringing it to sale. The last clause of the section is intended to remedy a defect in the previous law under which the holder of a lien on an estate could save it from sale by depositing the amount of the arrears with the Collector, but when that was due, he had nothing to look to for the recovery of the amount deposited than the personal security of the defaulting proprietor. This was inequitable, and hence the present Act provides that the lien holder shall have the same security over the estate for his deposit as he had by his original lien.

Recovery of deposit from defaulting Zemindar.—See Ss. 69 and 70 of the Indian Contract Act. A person, making the deposit under S. 9, must not only be interested in the payment, but must also be actuated by the motive of protecting his own interests which will really be endangered or which, he thinks *in good faith*, will be endangered, if the payment is not made. Thus, a patnidar, who had made certain payments on account of Govt. revenue due by his superior landlords who had defaulted, although a separate account for payment had been opened, brought a suit to recover the amount so paid, it was contended that the payments were merely voluntary and, therefore, unrecoverable; it was, however, held that the patnidar was entitled to recover under S. 69 of the Contract Act, and also under S. 9 of Act XI of 1859 as he believed in good faith that his interest would be endangered by a sale taking place. "It seems to us", said the Judges, "that the patnidar was interested in its payment. It is true that if the separate share had been sold under S. 13 of the Sale Law for arrears of revenue due upon it, the patnidar's patni-rights would not have been affected by the sale. But, if the entire estate had been put up to sale under S. 14, the patni would have been avoided by such sale. Therefore although in consequence of the Zemindar's non-payment of the revenue,

the risk to the patnidar's patni was somewhat remote, still it cannot be denied that he had *some* interest in it." The liability of the defaulter under this section accrues upon the money deposited being credited in payment of the arrear, because the person making the deposit is not entitled to recover until the money deposited has been credited in payment of the arrear.

Payment by a co-sharer.—A co-sharer upon payment of the whole revenue becomes entitled to contribution, which is a personal liability and does not extend to a charge on the estate. This was the law in the *Sudder Dewani Adalat* and under the old Revenue Sale Laws. A different view was, however, held in 22 W. R. 411 and some other cases where it was held that, where a co-sharer of an estate was compelled to pay a quota of the Govt. revenue due on account of a share not his own, in order to save the whole estate from being sold, he was entitled to a charge upon such share of the estate. Mitter J., in delivering the judgment of the minority in 14 Cal. 809 observed. "In the majority of cases, a contrary view would result in injustice. Generally, a co-sharer defaults to pay his quota of Govt. revenue when he is in insolvent circumstances. In these cases, a mere personal decree against the defaulting co-sharer would be useless. On the other hand, if the co-sharer is allowed a charge, I cannot conceive of any instance in which injustice is likely to be done, to any party. In cases not governed by any particular legislative enactment Courts in this country are directed by the Legislature to act according to justice, equity and good conscience. It seems to me that if in this case, we give effect to a principle which prevents injustice in many cases and in no conceivable case operates unjustly, which has been acted upon for more than 12 years and which has been adopted by the Legislature in cognate subjects. (S. 13, Reg. VIII of 1819 ; S. 62, Act VIII of 1819 and S. 171 Act VIII of 1885), we shall be strictly following the direction of the Legislature referred to above." This view, was, however, dissented from in 8 Cal. 402 and overruled by the Full Bench in 14 Cal. 809, where the majority of the Judges held that a co-sharer who had paid the whole revenue and thus saved the estate, did not, by reason of such payment, acquire a charge on the share of his defaulting co-sharer. Wilson J., who

The proprietor of a fractional share of an entire estate pays the entire Govt. revenue due, for himself as well as for his co-sharers, the latter having refused or neglected to pay their share of the revenue. He wishes to recover the amount which he has paid on behalf of his co-sharers. State by what process and from what properties. if any, he can recover back such amount (a) when there is a separate account in his name, (b) when there is not.
B. L. '10(a).
A co-sharer pays the whole revenue and thus saves the estate from

sale. Does he thereby acquire a charge on the share of the defaulting co-sharer ? B.L. 1916(*a*). *A, B, and C are co-sharers in a revenue-paying taluk. A and B are habitual defaulters. How can C protect his share from sale under the provisions of the Revenue Sale Law ?* B. L. '19 (b)

delivered the judgment of the majority in the above Full Bench case observed : "In S. 9. the Legislature dealing with two classes of persons, says that one of them shall have a personal right of suit and that the other shall have a lien, besides. I think the inference is that the Legislature intended the section to represent the law and that seems to me to go far to negative the doctrine now contended for, by which, both classes alike would have a lien. So too when in the same section it is said that if the holder of a lien pays the revenue, the amount shall be added to the amount of the original lien. I think that the inference is that that is the lien which the Legislature intended him to have, a lien on the interest of his own mortgagor, not as now contended, a general lien on all the interests of the estate. I have not overlooked the fact that the case of a part-owner is not dealt with in S. 9, nor except in a particular instance, in S. 15, expressly dealt with at all. But the doctrine contended for is general."

The co-sharer must have at the time of payment an interest which is likely to be jeopardised. Thus, where a sharer voluntarily came forward and paid balance due by a defaulting co-sharer who had a separate account before the latter's share had been put up to sale under the provisions of S. 13, it was held that he was not entitled to be re-imbursed, for he was in no way bound to make the payment nor were his interests jeopardised by the default of the co-sharer whose share alone was liable for sale in the first instance (7 W. R. 365). But in 2 Cal. 213 in a similar case, a different view was taken and it was decided that a co-sharer would be entitled to recover if he believed in good faith that his interest would be endangered by a sale taking place.

What steps should be taken by the Zemindar to minimize the chance of revenue sale ? B. L. 1908 *What preventive action can a Zemindar take to avert*

11. **Deposit for the protection of estate from sale**—(*a*) If any recorded proprietor or co-partner of an estate shall deposit with the Collector money or Government Securities endorsed and made payable to the order of the Collector, and shall sign an agreement pledging the same to Government by way of security for the jama of the entire estate, and authorising the Collector to apply to the payment of any arrear of revenue that may become due from that estate the whole or any portion of the said money or securities that

may be necessary for that purpose, then, in the case of any arrear of revenue due from the said estate not being paid before sunset of the latest day of payment fixed under S. 3 of this Act, the Collector shall apply, to the payment of such arrear, the said money or securities, or such part thereof, or of any interst due on the said securities, as may be necessary, and, for this purpose, the Collector shall first apply any money that may be in his hands, and any interests, that may be due upon such securities, and may then sell and transfer the securities for any balance that may remain.

risks of a revenue sale? B. L. '10 (a).

(*b*) And, so long as any money or securities as aforesaid, sufficient to cover any arrear that may fall due, shall remain and be available as aforesaid, the estate, for the protection of which the said deposit was made, shall be exempted from sale for arrears of revenue.

(*c*) All moneys and securities so deposited shall be exempted from attachment otherwise than in execution of a decree of a Civil Court. (S. 15),

Note.—The object of this section is to afford land-holders, particularly absentees, facilities in guarding against the accidental sale of their estate for arrears of revenue by neglect or fraud of their agents. "It occasionally might happen, specially in the case of an absent proprietor, that a man's property might be sold for arrears of revenue which accrued from no intentional default, and no negligence on his part, but but from some accident, or from the neglect of an agent. Now, the property may be very valuable, and if put up for sale, it might be sold for a sum very disproportionate to its value to its proprietor. To enable proprietors to secure themselves, if they choose, from any such risk, it has been provided that every Zemindar paying revenue directly to Government for an entire estate should have the power of lodging with the Collector a sum of money or Company's paper for the purpose of being applied to the payment of any arrear of revenue that might remain due upon its estate, after sunset of the latest day of payment. This, if the deposit were made equal to one or two instalments of revenue, would secure the estate from the possibility of being sold, even if the proprietor were living in England. The deposit might be made in Govt. securities sufficient in amount to pay the revenue

from the interest, whereby the estate might be permanently secured from sale for arrears of revenue—a provision which might be of use for peculiar properties which, from buildings having been erected upon them, gardens or orchards having been planted upon them, or from other like causes, were of great value in proportion to the revenue assessed upon them." (Proceedings of the Legislative Council).

12. **Withdrawal of the deposit.**—It shall be competent to the person making a deposit under the foregoing provisions, or his representative or assignee, at any time to withdraw the deposit and to revoke the pledge of the same. (S. 16).

13. **Sales by whom and where to be made.**—Sales shall ordinarily be made by the Collector or other officer duly authorized by Government in the land-revenue office at the sadar station of the district: Provided, however, that it shall be competent to the Board of Revenue to prescribe a place for holding sales other than such office whenever they shall considered it beneficial to the parties concerned. (S. 19).

14. **Adjournment of the sale**—In case the Collector shall be unable, from sickness, from the occurrence of a holiday, or from any other cause, to commence the sale on the day of sale fixed, or if, having commenced it, he be unable from any cause to complete it, he shall be competent to adjourn it to the next day following, not being Sunday or other close holiday, recording his reasons for such adjournment, forwarding a copy of such record to the Commissioner of Revenue, and announcing the adjournment by written proclamation stuck up in his Kachari, and so on from day to day, until he shall be able to commence upon or to complete the sale; but with the exception of adjournments so made, recorded, and reported each sale shall invariably be made on the day of sale fixed in the manner as aforesaid. (S. 20).

15. **Order of selling.**—On the day of sale fixed according to S. 6 of this Act, sales shall proceed in regular order, the estate to be sold bearing the lowest number in that tauji or register in use in the Collector's

office of the district being put up first : and so on, in regular sequence : and it shall not be lawful for the Collector or other officer as aforesaid to put up any estate out of its regular order by number, except where it may be necessary to do so in default of deposit as provided in S. 22 of this Act. (S. 21).

Note.—The rules laid down in this section are prescribed with a view to prevent the officer holding the sale from capriciously putting up an estate out of its order on the rent-roll, and thereby surprising intending purchasers and inflicting an injury, it may be, on the defaulting proprietor. They are in their nature no doubt purely arbitrary ; but notwithstanding their nature, the observance of them is necessary under the law to prevent the defaulter from setting aside the sale on the ground of irregularity. (9 M. I. A. 282).

16. **Sale of separate sharers.**—When the Collector shall have ordered* a separate account or accounts to be kept for one or more shares, if the estate shall become liable to sale for arrears of revenue, the Collector or other officer as aforesaid in the first place shall put up to sale only that share or those shares of the estate from which, according to the separate accounts, an arrear of revenue may be due.

Describe the procedure for the sale of an entire estate for arrears of revenue under Act XI of 1859 when the Collector has ordered a separate account or accounts to be kept for one or more shares. C.U. 1926(*b*).

In all such cases notice of the intention of excluding the share or shares from which no arrear is due shall be given in the advertisement of sale prescribed in S. 6 of this Act. The share or shares sold, together with the share or shares excluded from the sale, shall continue to constitute one integral estate, the share or shares sold being charged with the separate portion, or the aggregate of the several separate portions, of jama assigned there. (S. 13).

Effect of sale under S. 13.—*See* S. 54 *infra.*

17. **Entire estate may be sold under certain conditions.**—If, in any case of a sale held according to the above provisions, the highest offer for the share exposed to sale shall not equal the amount of arrear due

A and B are joint-proprietors of a permanently settled estate in Bengal. The have opened separate

* An application to the Collector for a separate account is not enough to protect a share from sale. It is not when an application has been made for a separate account, but when the Collector has *ordered* a separate account that he is to put up to sale only the share in respect of which an arrear of revenue may be due. (7 W. R. 54).

accounts of their respective shares with the Collector. A fails to pay his share of current instalment of revenue. How is the Collector to proceed to realise the unpaid portion of the revenue under Act XI of 1859? What liability if any, attaches to the share of B for arrears of A's share? B. L. 1904.

thereupon upto the date of sale, the Collector or other officer as aforesaid shall stop the sale, and shall declare that the entire estate will be put up to sale for arrears of revenue at a future date, unless the other recorded sharer or sharers, or one or more of them, shall, within ten days, purchase the share in arrear by paying to Government the whole arrear due from such share. If such purchase be completed, the Collector shall give such certificate and delivery of possession as are provided for in Ss. 28 and 29 of this Act to the purchaser or purchasers, who shall have the same rights as if the share had been purchased by him or them at the sale.

If no such purchase be made within ten days as aforesaid, the entire estate shall be sold after notification for such period, and publication in such manner, as is prescribed in S. 6 of this Act. (S. 14).

Note.—This section relates, amongst other matters, to a purchase by the shareholders other than the owner of the defaulting share, in case the sale of the share in default does not fetch the full amount of arrears due to Government (30 Cal. 1071). But in 41 Cal. 1092 this view was doubted by Coxe J. who observed: "As there is no previous reference in the section to any sharer, the words 'other recorded sharer' must, I think, mean 'a recorded sharer of a share other than the share exposed for sale.' This perhaps would, by implication, exclude any sharer of the share exposed for sale, even though he himself might have paid his quota of the revenue due on the share exposed for sale. It seems doubtful if the legislature intended this. It is clear from S. 53 that defaulting proprietors may purchase at sales for arrears of revenue and I can see no reason why they should be excluded from sales under S. 14. Of course at a sale under S. 14 they may have to pay the arrears due, whereas at an auction they would have to pay the full value. It may, therefore, be said that to allow them to purchase under S. 14 might defeat the law, because such a purchase would come to the same thing as depositing the arrears after the latest day of payment, which cannot be done without the Collector's leave. But as they would be entitled to the balance after the arrears were satisfied, the distinction would not make much difference. If the defaulting sharer could have purchased the share on

the day of sale under S. 13 and this would seem from S. 53 to be possible, it is difficult to understand why he should not purchase under S. 14. I am inclined to think, therefore, that the word 'other' in S. 14 is a mere inadvertance."

The payment of the arrears of Government revenue by the defaulting share-holder before the entire estate is put up to sale does not invalidate a sale under the section. There can be no doubt that whether the sale is a sale of a share only under S. 13. or is a sale of the entire estate at a 'future time' such as is contemplated by S. 14, it must always be a sale for default of payment of revenue under S. 3 and be subject to the provision of S. 6, and, consequently, no payment or tender can prevent a sale either of the share or of the entire estate unless made in time, or unless the Collector decides to exempt the estate or share from sale under power given him in S. 18, and it is impossible to hold that the estate or share is not in arrear for purpose of bringing it to sale, and is not in arrear for purpose of enabling the Collector to act under the provisions of S. 14." (*Per* Petharam, C. J. in 21 Cal. 844).

There is however, nothing to prevent a Collector or a Commissioner from exempting an estate from sale in such circumstances. Notwithstanding the direction of S. 14 that the entire estate shall be sold on the failure of any other sharer to purchase the share by paying arrear due to Government the Collector or the Commissioner is at liberty to exempt the estate from sale under S. 18. The discretion to exempt from sale vested in the Collector and the Commissioner by S. 18 is a general one that applies to all sales under the Act including sales authorized by S. 14. The section does not require that any notice should be issued before the Collector proceeds to put up the entire estate for sale. All that the section requres is that when it is found that the arrears cannot be realised by the sale of the shares in arrears he should make a declaration that the entire estate will be put up to sale unless the amount in arrear is paid up within 10 days *from the date of the declaration.* (34 Cal. 381.)

Scope of the section.—The section was intended merely to give co-sharers a chance of saving the estate and to scure the

payment of revenue and was not at all intended to define the rights of the co-sharers *inter se*. The word "unless the other recorded sharer or sharers, or one or more of them, shall, within ten days, purchase the share in arrear by paying to Government the whole arrear due from such share" mean that the purchase is effected by the payment of the arrears. As soon as the payment is made, the purchase is complete and there is nothing left for any one else to buy. The Collector must recognise the depositor who first-pays the whole amount, or if there are more depositors than one, to recognise as joint purchasers those whose payments first amounted to the total arrears due. (41 Cal. 1092.)

[**Problem** : In tauzi No. 100, A, B, C and D are co-sharers holding separate accounts. The accounts of A and B fell into arrears and the shares of A and B were advertised for sale, but no bids were received on the 20th September, the date fixed for the sale. Accordingly the Collector acting under S. 14 of Act XI of 1859 declared on the 20th September that the entire estate would be sold, unless the sharers paid up the arrears within 10 days. On the 21st September, C paid in the arrears due from the share of A and on the 28th he paid the arrears due from the share of B. On the 22nd September A, B and D offered to pay the arrears due on the two separate accounts in arrear. The Collector declared C to be the purchasers, his order was upheld by the Commissioner on appeal and the sale was confirmed and possession delivered to C. Thereupon A, B and D claim to be the joint purchasers of the shares of A and B. How would you decide conflicting claims of A, B, C and D ? B. U. 1915 (*a*).]

Payment by a co-sharer before a share is put up to sale.— A share-holder voluntarily coming forward and paying an arrear of revenue due by a defaulting co-sharer, who has separate account, before the share of such defaulter has been put up to sale under this section cannot claim to be re-imbursed by such defaulter, nor is the defaulter under any legal obligation to repay the amount advanced, for the party so paying was in no way bound to make such payment, nor were his interests jeopardised by the default of the co-sharer whose share alone was liable in the first instance. (7 W. R. 365.)

Effect of a sale under S. 14.—*See* S. 54 *infra.*

18. **Opening of separate account in respect of shares.** (1) **Separation of shares held in common by opening separate accounts.**—When a recorded sharer of a joint estate held in common tenancy desires to pay his share of the Government revenue separately, he may submit to the Collector a written application to that effect. The application must contain a specification of the share held in the estate by the applicant. The Collector shall then cause to be published in his own office, in the Court of the Judge. Magistrate (or Joint Magistrate, as the case may be) and Munsiffs, and in the police-thanas in whose jurisdiction the estate or any part thereof is situated, as well as on some conspicuous part of the estate itself, a copy of the application made to him. If within six weeks from the date of the publication of these notices, no objection is made by any other recorded sharer, the Collector shall open a separate account with the applicant, and shall credit separately to his share all payments made by him on account of it. The date on which the Collector records his sanction to the opening of a separate account shall be held to be that from which the separate liabilities of the share of the applicant commence. (S. 10).

(2) **Separation of shares consisting of a specific portion of land by opening separate accounts.**—When a recorded share of a joint estate, whose sharer consists of a specific portion of the land of the estate, desires to pay his share of the Government revenue separately, he may submit to the Collector a written application to that effect. The application must contain a specification of the land comprised in his share, and of the boundaries and extent thereof, together with a statement of the amount of sadar jama heretofore paid on account of it. On the receipt of this application, the Collector shall cause it to be published in the manner prescribed for publication of notice in the last preceding section. In the event of no objection being urged by any recorded co-sharer within six weeks from the time of publication, the Collector shall open a separate account with the applicant, and shall credit sepa-

rately to his share all payments made by him on account of it. The date on which the Collector records his sanction to the opening of a separate account shall be held to be that from which the separate liabilities of the share of the applicant commence. (S. 11).

How may separate accounts be opened under Act XI of 1859 and what are the advantages of opening a separate account? B. L. 1900.

(3) **If objection be made, parties to be referred to Civil Court**—If any recorded proprietor of the estate, whether the same be held in common tenancy or otherwise, object that the applicant has no right to the share claimed by him, or that his interest in the estate is less or other than that claimed by him, or, if the application be in respect of a specific portion of the land of an estate, that the amount of sadar jama stated by the applicant to have been heretofore paid on account of such portion of land is not the amount which has been recognised by the other sharers as the jama thereof, the Collector shall refer the parties to the Civil Court, and shall suspend proceedings until the question at issue is judicially determined. (S. 12).

Note.—Before the enactment of these sections, where one of several co-sharers failed to pay his proportion of revenue and so brought the estate into arrears, the other co-sharers were compelled to pay for the defaulter out of their own pockets in order to avoid the loss of their own shares, which would be the result of the sale. S. 10 speaks of a recorded share of a joint estate *holding his share jointly with his co-sharers in common tenancy*, while S. 11 speaks of a recorded sharer holding *his share consisting of a specific portion of the estate.*

The system of joint ownership, which is the normal estate of every Hindu family and which exists not infrequently amongst the Muhamadans, is occasionally productive of inconvenient results, provident and thrifty sharers being made to suffer the consequences of the improvidence and extravagance of their co-sharers. Thus where one of several co-sharers in an estate failed to pay his quota of the revenue, and so brought the estate into arrear, the other co-sharers had no alternative but to pay his quota out of their own pockets, if they would avoid the loss of their own shares, which would be the result of a sale. One of the principal objects of Act XI of 1859 was, as mentioned in the Preamble, to obviate this

hardship, and to fulfil this object, Ss. 10 and 11 have been enacted. It is to be observed that S. 10 applies to the case of a person who wishes to be treated by the Collector as an undivided shareholder of a revenue-paying estate while S. 11 applies to a case of one who desires to be recorded as a sharer of a joint estate whose share consists of a specific portion of the land of the estate. (22 W. R. 449).

A proprietor of a joint estate may be in enjoyment of his interest therein in one of three ways. He may be a recorded sharer of the whole joint estate held in common tenancy, or he may be a recorded sharer of the joint estate and his share may consist of a specific portion of the land of the estate or he may be recorded as the proprietor of an undivided interest held in common tenancy in a specific portion of the land of the estate, but not extending over the whole estate. If his interest is of the first description, he may apply to have his share separated and a separate account opened under S. 10 Act XI of 1859. If his interest is of the second description, he may have his share separated and a separate account opened under S. 11 of the same Act And if his interest is of the third description, he may have his share separated and a separate account opened under S. 70 of the Land Registration Act (VII B. C. of 1876).

Effect of separation of account.—When a separate account has been opened under S. 10 or S. 11, the liability of all the shareholders of the revenue of the entire estate continues to be joint. The share, however, is not liable to sale, unless the revenue demanded for the estate, taken as a whole, remains unpaid. Only the share or the shares from which, according to the separate accounts, an arrear of revenue is due should, in the first place, be put up to sale, and such a sale would pass to the purchaser the share of the defaulting shareholder as it is registered in the Collector's book, *i. e.*, an undivided share if registered under S. 10 and a specific portion of the estate if registered under S. 11.

It has been said above that a separation of shares may be effected either under S. 10 or S. 11, Act XI of 1859, or under S. 70 of Act VII of 1876. It is important to remember that a separation under the last section does not carry with it the same effect as a separation under the first two and that the consequences of opening

a separate account in cases covered by S. 70 are the same as the consequences of opening a separate account under S. 10 or S. 11 of Act XI of 1859, only in so far as Ss. 13 and 14 of this Act are concerned, that is, only in respect of the sale of the separated share and of the entire estate under certain specified conditions. But the benefit of the exception made in S. 53 of Act XI of 1859 in favor of the sharers, with whom the Collector has opened separate accounts under Ss. 10 and 11 of the Act, is not extended to persons who have opened separate accounts under S. 70 of the Land Registration Act. It follows from this, that the co-partner whose interest is of the description mentioned in S. 70 and whose separate account has been opened under that section, can purchase the estate at a revenue-sale, only as subject to incumbrances. (39 Cal. 353).

19. **Deposit on account of purchase-money**—The party who shall be declared the purchaser of an estate or share of an estate at any such public sale as aforesaid shall be required to deposit, immediately or as soon after the conclusion of the sale of the estate or share as the Collector or other officer as aforesaid may think necessary, either in cash, Bank of Bengal post bills, or Government Securities, to be valued at the market rate of the day, duly endorsed, twenty-five per cent on the amount of his bid ; and, in default of such deposit, the estate or share shall forthwith be put up again and sold. (S. 22).

20. **Full payment of purchase money**—The full amount of purchase-money shall be made good by the purchaser before sunset of the thirtieth day from that on which the sale of the estate or share of an estate bought by him took place, reckoning that day as one of the thirty ; or, if the thirtieth day be a Sunday or other close holiday, then on the first office day after the thirtieth ; and, in default of payment within the prescribed period as aforesaid, the deposit shall be forfeited to Government, the estate or share shall be re-sold, and the defaulting purchaser shall forfeit all claim to the estate or share, or to any part of the sum for which it may subsequently be sold. And, in the event of the proceeds of the sale which may be eventually consummated being less than the price bid by the defaulting

bidder aforesaid, the difference shall be leviable from him by any process authorized for realising an arrear of public revenue, and such difference shall be taken and considered to be a part of the purchase-money, and shall be dealt with in the manner hereinafter prescribed for the disposal thereof. (S. 23).

Note.—Where the balance of the purchase-money is not paid within 30 days there *must* be a re-sale. Government has no power to allow the auction purchaser to pay the balance of the purchase-money after the expiration of the statutory period of 30 days.

21. **Re-sale**—When default is made in the payment of purchase-money a notification of the intended re-sale shall be published for the period and in the manner prescribed in S. 6 of this Act; but such notification shall not be published until the expiration of three clear days after the day on which the default shall have occurred and if the payment or tender of payment of the arrear on account of which the estate or share was first sold, and of any arrear which may have become subsequently due, shall be made by or on behalf of the proprietor* of the estate or share, before sun-set of the third day, the issue of the notification of re-sale shall be stayed. The rules contained in the last preceding section shall be applicable to every such re sale.

Provided that, if default of payment of purchase-money shall occur more than once, the amount to be recovered from the defaulting bidders shall be the difference between the highest bid and the proceeds of the sale eventually consummated, which amount may be levied in manner aforesaid from any of the defaulting bidders to the extent of the amount by which his bid exceeds the amount realised. (S. 24).

22 **Sale when final.**—All sales of which the purchase-money has been paid up as prescribed in S. 23 of this Act, and against which no appeal shall have been preferred, shall be final and conclusive at noon of the

* The section lays down that, if within 3 clear days from the date of the default of the bidder, the defaulting proprietor pays or tenders payment of, the arrear on account of which the estate or share was first sold and of any arrear which may have subsequently become due, the re-sale shall be stayed. It should be observed that this payment or tender must be made either by the proprietor or by some body else on his behalf.

60th day from the day of sale, reckoning the said day of sale as the first of the said 60 days. And sales against which an appeal may have been preferred and dismissed by the Commissioner shall be final and conclusive from the date of such dismissal, if more than 60 days from the day of sale, or, if less, then at noon of the 60th day as above provided. (S. 27).

23. **Certificate of sale**—Immediately upon a sale becoming final and conclusive, the Collector or other officer as aforesaid shall give to the purchaser a certificate of title in the form prescribed in Schedule A annexed to this Act. And the said certificate shall be deemed in any Court of Justice sufficient evidence of the title to the estate or share of an estate so'd being vested in the person or persons named from the date specified ; and the Collector shall also notify such transfer by written proclamation in his own office and in the Courts of the Munsifs and police thanas within whose jurisdictions any part of the estate or share sold shall be situated. (S. 28).

Note.—A certificate of title under this section issued before the expiry of the period of 60 days from the date of the sale, as required by S. 17, is not a certificate duly issued under the provision of these Acts. (18 Cal. 25) Nor can a certificate give a good title in a case where there are no arrears of Government revenue and where consequently the sale is void, inoperative and without legal effect. (15 W. R. 141).

The certificate granted by the Collector to a purchaser at a revenue sale is not the basis of his title. The title automatically vests in the purchaser by reason of the sale and the payment of the purchase money as provided by the statute. This is obvious from S. 27 which provides that, upon payment of the purchase-money and upon expiry of the prescribed period, the sale becomes, by operation of law, final and conclusive. The certificate which it is the duty of the Collector to grant to the purchaser does not create title ; it is merely evidence of title. The purchaser, who has obtained the certificate, becomes entitled to delivery of the possession of the estate, and he has the further advantage that, under S.

8 of Act. VII of 1868 (B. C.), the certificate is conclusive evidence of the regularity in the service of certain notices. But there is no authority to support the proposition that the title is created by the certificate, nor is there any intelligible principle upon which such a view can be maintained. (Roy's Revenue Sale Law).

A certificate of title granted under S. 28 of this Act is under S. 8 of Act VII of 1868, conclusive evidence that all necessary notices have been served and posted ; thus in a sale for arrears of revenue, after the certificate of sale had been issued to the purchaser, the provisions of S. 8 of Act VII of 1868 will operate as a bar to a suit to set aside the sale on the ground of irregularity in serving and posting the notices under Ss. 6 and 7 of this Act. It should be remembered, however, that while S. 8 of Act VII of 1868 raises an irrebutable presumption that a notice required to be served has been duly served, it does not raise the further presumption that the notice itself is in accordance with law, either as to its contents or as to the time of its service. All that the section intends to do is to render it unnecessary to prove that the notice has been posted, but it is still necessary to prove the contents of the notice as are required by law and the Court is not bound to presume that the notification was affixed in the places mentioned in S. 6 of this Act, 30 days before the date fixed in the notification as the date of the sale. In a suit to set aside a sale for arrears of revenue on the ground of non-compliance with the provisions of S. 6, the court is not precluded by the provisions of S. 8, Act VII of 1868, from receiving evidence to prove that the notice under S. 6 of Act XI of 1859 had not been served 30 days before sale, the presumption under that section having reference only to the due service and posting of the notification (7 C. W. N. 377). Similarly, where no order had been passed for the issue of a notification under S. 5, and none was actually issued, the defect was not cured by S. 8 of Act VII of 1868 which might be invoked if objections were made to the service and posting of the notice. (1. C. L. J. 565). In 2 C. L. J. 325 it has, however, been held that the grant of a certificate under S. 28, is conclusive evidence that the notice required under S. 7 to be served in the *mahal* has been *issued*. Even if it is assumed that there is a well-founded distinction between the issue and the service

of a notice under S. 7 and that the provisions of S. 8 of Act VII of 1868, apply only to the latter operation, and not to the former, the presumption under S. 114 *(e)* of the Indian Evidence Act, until the contrary is proved, would be that the notice had been issued and that the onus would be upon the person who seeks to have the sale set aside, to establish that the requirements of the statute had not been complied with by the Collector.

24. **Delivery of possession**—The Collector or other officer as aforesaid shall order delivery of possession of the estate or share purchased to be made by removing any person who may refuse to vacate the same, and by proclamation to the occupants of the property by beat of drum, or in such other mode as may be customary, at some convenient place or places, and by affixing a copy of the certificate at the mulkachari, or in some conspicuous place, of the estate or share of an estate purchased. (S. 29).

25. **Application of purchase-money.**—The Collector shall apply the purchase-money, *first* to the liquidation of all arrears due upon the latest day of payment from the estate or share of an estate sold; and, *secondly*, to the liquidation of all outstanding demand debited to the estate or share of an estate in the public accounts of the district; then the residue, if any, shall be held in deposit on account of the late recorded proprietors of the estate or share of an estate sold, or their heirs or representatives, to be paid to his or their receipt on demand in the following manner, namely, in shares proportioned to their recorded interest in the estate or share of an estate if such distinction of shares were recorded, or, if not, then as an aggregate sum to the whole body of proprietors upon their joint receipt.

And, if, before payment to the late proprietor or proprietors of any surplus that may remain of the purchase money, the same be claimed by any creditor in satisfaction of a debt, such surplus shall not be payable to such claimant, nor shall it be withheld from the proprietor except under precept of a Civil Court. (S. 31).

Rights of a mortgagee to the surplus sale-proceeds.—S. 73 of the Transfer of Property Act which deals with the rights of a

mortgagee to the surplus sale-proceeds, runs as follows :—"Where mortgaged property is sold through failure to pay arrears of revenue or rent due in respect thereof, the mortgagee has a charge on the surplus, if any, of the sale-proceeds, after payment thereout of the said arrears, for the amount remaining due on the mortgage, unless the sale has been occasioned by some default on his part." In the earlier cases (15 Cal. 546 ; 24 Cal. 746) it has been held that this section applied only to cases where the property is sold free from all incumbrances. Where, therefore, the sale is not free from incumbrances the mortgagee can lay no claim to the surplus sale-proceeds, but may enforce his mortgage against the auction purchaser. The view was dissented from in 3 C. L. J. 52 where it has been held that a more correct view would be that the section applies to any case where the effect of the sale is that the lien on the mortgaged property in favour of the mortgagee has been extinguished owing to a sale of that property through the failure of the mortgagor to pay an arrear of revenue. That lien having been extinguished so far as it existed on the property itself, is transferred as a charge to the sale-proceeds, and the mortgagee is entitled under S. 73 T. P. Act, to recover his mortgage-debt out of the sale-proceeds. This view is important in considering the cases where a mortgage of a share of an estate is created between the date of the default and the date of the sale. There is a clear distinction between the rights acquired under S. 53 and under S. 54 of this Act. Under the former, a purchaser acquires the estate subject to all incumbrances existing *at the time of the sale* whether created before or after the default and even up to the date of sale ; but under S. 54, all incumbrances created after the date on which a purchase under that section takes effect, *i.e.*, after the date on which the default was made, are void. Thus a share of a taluk admitted to special registration, under Ss. 10 and 11 of this Act, was advertised for sale in default of the payment of the June Kist of Government revenue. On the 25th of July the recorded co-sharer mortgaged his interests in that share to the plaintiff. The sale took place on the 25th Sept., and the share was purchased by the defendant who obtained a certificate in due form under the Act, declaring, in accordance with S. 28, that his title accrued from the 29th June, the day after

the latest day fixed for payment of the June *Kist*, but it was *held* that the mortgage was of no effect as an incumbrance under S. 54 of the Act. (17 Cal. 148). In such a case, therefore, the provision of S. 73 T. P. Act would apply and the charge would be transferred to the sale-proceeds. (3 C. L. J. 52). A sale under S. 53 of this Act, has, on the other hand, no such effect and S. 73 T. P. Act does not apply.

It is to be observed that the mortgagee cannot withdraw the money in deposit, except by bringing a suit to enforce his charge created by the section.

If the sale is brought about by some default on the part of the mortgagee he cannot be allowed to take advantage of his own wrong and his right to the surplus would be extinguished.

What are the provisions for setting aside a revenue-sale under Act XI of 1859? B. L. 1919(a). *What are the civil or revenue authorities empowered to set aside the sale of an estate under Act XI of 1859 and on what grounds?* B. L. 1911(*b*). *State the grounds on which a revenue sale may be set aside.* B. L. 1906. *What are the provisions of Act XI of 1859 regarding setting*

26. **Annulment of sale.**—It shall be competent to the Commissioner of Revenue, on the ground of hardship or injustice to suspend the passing of final orders in any case of appeal from a sale; and to represent the case to the Board of Revenue, who, if they see cause, may recommend to the Local Government to annul the sale; and the Local Government, in any case, may annul the sale, and cause the estate or share of an estate to be restored to the proprietor on such conditions as may appear equitable and proper. (S. 26).

Note.—A petition of appeal may disclose a case of hardship or injustice, even where no irregularity exists, as for instance, that the sale has taken place where no arrear exists. Under such circumstances the Government may set aside the sale under this section. (8 W. R. 437). The competency of the Board and Government to take action for annulling a sale under this section depends on the Commissioner having suspended the passing of final orders in any case of appeal before him and having represented the case to the Board. Such a representation can only be made if an appeal against the sale is pending before the Commissioner. If the Commissioner does not think fit to exercise his power under this section and dismisses the appeal for the annulment of the sale of an estate, the sale becomes final, and neither the Board nor the Government has any jurisdiction to interfere with it.

The Board have regarded as genuine cases of hardship sales

which have been occasioned by—(*a*) mistakes or irregularities of Govt. servants ; (*b*) mistakes of proprietors or their agents, not the result of gross carelessness, in particular, mistakes in *challans* or money order forms ; (*c*) delays in the post office ; (*d*) refusal of the Collector to accept payment of arrear after the *kist* day in cases in which previous defaults or the exient of the default does not raise the presumption that the default was intentional, or refusal to exempt after payment of arrear has actually been accepted ; (*e*) ignorance on the part of proprietors of change of instalments ; (*f*) fraud committed by agents of proprietors by not crediting the dues into the Treasury ; (*g*) collusion on the part of co-sharers in bringing the estate to sale ; (*h*) inadequency of price (in special cases). (Roy's Revenue Sale Law).

aside of sales? B. L. 1907, 1926 (*a*). *How may a sale under Act XI of 1859 be set aside ? What restrictions does the Act impose upon the right to avoid a sale ?* B. L. 1908. *A Zemindari is advertised for sale for arrears of revenue. Is there any means to stop the sale, and if the sale is eventually held, how should the Zemindar proceed to annul the sale ?* B. L. 1913(a). *What is the procedure laid down in the Revenue sale Law relating to the setting aside of a sale ?* B.L. 1922(b). *What are the grounds upon which a revenue-sale may be set aside by an appeal to the Commissioner and by a*

Appeal to the Commissioner.—It shall be lawful for the Commissioner of Revenue to receive an appeal against any sale under Act XI of 1859, if such appeal be preferred to such Commissioner on or before the 60th day from the date of sale, or be presented to the Collector or other officers duly authorised to hold sales under the Act for transmission to the Commissioner, on or before the 45th day from the day of sale, and the Commissioner shall be competent to annual any sale of an estate or share of an estate which shall appear to him not to have been conducted according to the provisions of the Act, awarding at the same time to the purchaser a payment from the proprietor of compensation for his loss, if the sale has been occassioned by the neglect of the proprietor, and the order of the Commissioner shall in such cases be final. (S. 2, Act VII B. C. of 1868.)

An appeal against the sale as contemplated by S. 2, Act VII of 1868, is allowed to be presented to the Commissioner before the sunset of 60th day from the sale, or to be delivered to the Collector for transmission to the Commissioner before the sunset of the 45th day. The Commissioner is competent to annual any sale which appeared to him *not to have been conducted according to the provisions of the Act*, and where the sale was occasioned by the neglect of the proprietor, he may award a moderate compensation payable by him to the purchaser. Where although the provisions of the Act has been complied with there appears to the Commissioner to be

regular suit ?
B. L. 1925(a)
An estate is sold for arrears of revenue. On what grounds can the civil court interfere and annul such a sale ?
B. L. 1926(b).
Under what conditions, a Civil Court can annul a revenue-sale under Act XI of 1859 ?
Would such a suit lie on the ground that no arrear was due ?
B. L. 1919(a).
What are the remedies available to a Zemindar to set aside a Revenue sale ?
State the grounds of interference in such cases ?
B. L. 1919(b)
An estate was sold for arrears of revenue but it was proved that actually no arrears were due.
Is a suit to set aside such a sale maintainable in the Civil Court without any

hardship or *injustice*, he may suspend the passing of final orders and represent the case to the Board, who, if they see cause, may recommend to Govt. to annul the sale and restore the estate to the proprietor on such conditions as appear equitable and proper.

The only ground on which a revenue-sale can be set aside under S. 2, Act VII of 1868, is on the score of irregularity in conducting the sale. The terms of the section need not, however, be limited to pointing out only irregularities ; it may disclose a case of hardship or injustice where no irregularity in conducting the sale exists, for instance, that the sale has taken place where no arrear is actually due and under such circumstances, the Govt. under the provisions of S. 26, Act XI of 1859, may set aside the sale, (8 W. R. 439) An order passed by the Commissioner under S. 2, Act VII of 1868, is final and no appeal lies to the Board ; but it should be observed that an appeal to the Commissioner is not the only remedy open to the party whose estate has been sold (29 Cal. 73). If the Commissioner will not interfere, the party, who consider himself aggrieved, may bring an action in the Civil Court under S. 33 of the Act XI of 1859 and may ask to have the sale set aside on the score of irregularity, and the Court may set it aside on proof of the existence of such irregularity and of substantial injury caused to the plaintiff by such irregularity (8 W. R. 439).

27. **Notification of annulment of sale.**—The annulment by a Commissioner, or by Government, of a sale made under this Act, shall be publicly notified by the Collector or other officer as aforesaid in the same manner as the becoming final and conclusive of sale is required to be notified by S. 28 of this Act ; and the amount of deposit and balance of purchase-money shall be forthwith returned to the purchaser with interest thereon at the highest rate of the current public securities, which shall be paid by the Government, unless the proprietor shall have become liable for the same under the provision of S 25 or S. 26 of this Act. S 32).

28. **Jurisdiction of Civil Courts to annul sale.**—No sale for arrears of revenue made after the passing of this Act, shall be annulled by a Court of Justice except (1) upon the ground of its having been made contrary to the provisions of this Act, and (2) then only on

proof that the plaintiff has sustained substantial injury by reason of the irregularity complained of; and no such sale shall be annulled upon such ground unless such ground shall have been declared and specified in an appeal made to the commissioner; and no suit to annul a sale made under this Act shall be received by any Court of justice unless it shall be instituted within one year from the date of the sale becoming final and conclusive, as provided in S. 27 of this Act; and no person shall be entitled to contest the legality of a sale after having received any portion of the purchase-money.

Provided, however, that nothing in this Act contained shall be construed to debar any person, considering himself wronged by any act or omission connected with a sale under this Act, from his remedy in a personal action for damages against the person by whose act or omission he considers himself to have been wronged. (S. 33).

previous application before the Revenue Court? B. L. 1919(*b*), 1920 (*b*).

Can a sale be set aside on the ground taken for the first time before the Civil Court that no arrears were due? Give reasons or authority for your answer. B. L. 1905.

A is the owner of a revenue-paying estate. No arrears of revenue are due from him; but the Collector through mistake, put the estate to sale. A the owner of the estate without preferring an appeal to the Commissioner agst. the sale, brings a suit in the Civil Court to have the sale set aside. Is A's suit maintainable? B. L. 1914(b), 1923 (*a*).

In what ways may a sale under

Note.—The object of the Sale Law is to give a title to the purchaser which shall not be open to challenge by any body, hence it fences about the auction-purchaser against any claims of the defaulter or others, and provides another remedy for them should any one have suffered injury by the sale. The only ground on which a revenue-sale can be set aside is, as laid down in S. 25, that of irregularity in conducting the sale and then the Commissioner can set it aside on a petition of appeal to be presented to him. The petition may disclose a case of hardship or injury where irregularity does not exist; as for instance, that the sale has taken place where no arrear is due, and under such circumstances the Government, under S. 26, may set aside the sale. If the Commissioner will not interfere, the party aggrieved may, within one year from the sale becoming conclusive under S. 27, bring an action in the Civil Court under S. 33, and Court may set aside the sale on proof of irregularity and of substantial injury caused thereby. If no irregularity causing substantial injury * is proved, the Civil Court cannot enter-

* It should be noticed that it is only when substantial injury is proved to have been sustained by reason of an irregularity that a Court is justified in setting aside a sale. (19 W. R. 283) Where, however, a sale by a Collector under Act XI of 1859 is absolutely illegal and void as not being a sale which

Act XI of 1859 be set aside ?

When a suit is brought in a Civil Court for setting aside a sale of arrears of revenue, what are the conditions to be satisfied in order that the plaintiff may succeed ?

B.L. 1916(b).

What are the grounds upon which a Civil Court may annul a sale of an estate for arrears of revenue ?

B.L. 1916(*a*). 1914(*a*), 1905, 1902, 1921 (suppl.), 1925 (*b*).

Indicate the extent of the jurisdiction of the Civil Court to annul a sale for arrears of revenue.

B. L. 1901, 1911 (*a*).

"When there is no arrear of revenue due, a Civil Court may set aside a sale held under the Revenue Sale Law as a sale

tain an action to set aside a sale for arrears and the only course open to an injured party is a suit for damages as provided in the latter part of S. 33, (8 W. R. 439). Consequently, it was held in 13 C. L. R. 1 that where the irregularity in the service of a notice under S. 6 had not been taken in the grounds of appeal to the Commissioner, it could not be urged in a regular suit as a ground for setting aside the sale. (also *Vide* 7 C. W. N. 337). Similarly it was observed that the non-issue of a notice under S. 5 was an irregularity of the nature contemplated by S. 33 and must be specified in an appeal to the Commissioner, or it could not be urged in a subsequent suit. So also, in 21 Cal 844 it was decided that the objection as to the illegality of the 10 day's notice under S. 14, unless taken in the ground of appeal to the Commissioner, cannot be taken in a regular suit in the Civil Court.

Ordinarily a Civil Court can not entertain a suit under this section unless there has been a prior appeal to the Commissioner and no suit will lie in the Civil Court for setting aside a sale on a ground not taken in appeal before the Commissioner. Having regard to the scheme of the Act and the express direction contained in S. 33 it seems clear that in every case where a sale for arrears of revenue is impeached as being contrary to the provisions of this Act, no grounds of objection are open to the plaintiff which have not been declared and specified in an appeal to the Commissioner. But a suit may be brought in the Civil Court to set aside a sale held under this Act on the ground that no arrears were due, although such ground was not taken in an appeal to the Commissianer as provided for in S. 33 of the Act. (2 C. W. N. 360). The Act does not sanction, and by plain implication forbids, the sale of any estate which is not at the time in arrears of Government revenue. (25 Cal. 833).

The whole clauses of the Act, in so far as these relate to sales, or to their challenge at the instance of the proprietor, as well as the provisions of Sec. 2 of Act VII of 1868, are framed upon the express footing that they are to be applicable to the sale of estate

a Collector had power to hold under the Act, the sale is not a sale within the meaning of the term as used in S, 33 so as to render it necessary for the defaulter to prove that he has sustained a sustantial injury. (11 Cal. 200, Cal. 398).

which are in arrear of duty. The provisions of S. 33 do not, therefore, apply to cases in which no arrears are actually due. (22 C. L. J. 525). Appeal to the Commissioner which is a condition precedent to the action of the Civil Court, refers to questions of procedure only—to questions, that is, relating to the regularity or otherwise of the sale, but to decide a question of validity on the ground of arrears or no arrears, it is not necessary that there should be a previous appeal to the Commissioner. (13 W. R. 333). In 10 W. R. 66 F. B. Mitter. J. observed :—"The jurisdiction of the Collector to hold a sale under Act XI of 1859 is essentially dependent upon the existence of legally sufficient arrear, and it appears to me to be unreasonable to suppose that the Legislature has taken away from the parties their remedy in a case in which no arrear was due, when a mere informality in conducting the sale might be sufficient to vitiate it. To put such a construction upon S. 33 appears to me to lead to the inevitable conclusion that the Collector might safely contravene the provisions of all other Acts and Regulations, provided he adheres to the mere formalities of a sale prescribed by Act XI of 1859, unless the Commissioner would choose out of a mere commiseration to report the matter to Government as a case of hardship under S. 26. Suppose, for instance, that the Collector had sold the estate of one person for arrears of revenue due from another, and that the sale had been conducted in strict conformity with the provisions of Act XI of 1859, can it be said that the sale would stand good if no appeal had been preferred to the Commissioner, when it is clear that the Commissioner could not have granted any relief under S. 25, as there would be nothing in the Collector's proceeding's contrary to the provisions of Act XI 1859 in such a case ? It appears to me manifestly erroneous to hold that a party is bound to appeal to a particular authority upon a particular ground, when that authority to whom that appeal is to be preferred can give him no relief upon that ground. I think that such a construction would be opposed to the letter as well as to the spirit of the Act." In 12 W. R. 311, it was observed :—"It is a condition precedent to the exercise of any authority of the Collector under Act XI and a condition precedent to the assumption by him of any power under that Act, that there should be an arrear of revenue due

held without jurisdiction."
Explain.
B. L. 1924(*a*).
When can a sale for arrear of revenue, made after the passing of the Revenue Sale Law, annulled by a Civil Court ?
Can the validity of the sale be questioned by a person who has received the purchase money ?
B. L 1921(*a*).
Under what circumstances does the jurisdiction of a Civil Court arise in suits to annul revenue sales?
Can a person other than a proprietor who had an interest in the estate antecedent to its sale maintain a suit to impeach its validity ?
B. L. 1921(*b*).

before he can institute proceedings under that Act. Ss. 2, 3 and 5 read together seem to be conclusive on the point".

[**Problem** :—An estate was sold for arrears of revenue on the 11th February, 1910, and an appeal against the sale was preferred to the Commissioner, which was dismissed on the 6th April, 1910. A certificate of title in the prescribed form was given to the purchaser. The grounds specified in the appeal to the Commissioner were non-service of notification under Ss. 5, 6 and 9 of Act XI of 1859. A suit is to be instituted in the Civil Court to set aside the sale on the said grounds as well as on the additional ground that the estate was not in arrear. (*a*) Within what time must the suit be instituted ? (*b*) Will the additional ground be entertained ? (*c*) How far will the certificate of title given to the purchaser affect the question of irregularities complained of ? (*d*) What facts must the plaintiff prove to entitle him to a decree ? Ans. See notes under Ss. 33 and 28.]

The right to sue to set aside a sale for arrears of revenue is not confined to proprietors alone. It extends to all persons, such as mortgagees, permanent lease-holders, patnidars, etc., having an interest in the property antecedent to the sale. But no person who has received the purchase money or any part thereof, is entitled to contest the legality of the sale.

29. **Effect of annulment of sales by Court.**—If a sale made under this Act be annulled by a final decree of a Civil Court, application for the execution of such decree shall be made within six months after the date thereof ; otherwise the party in whose favour such decree was passed shall loose all benefit therefrom, and no order for restoring such decree-holder to possession shall be passed until any amount of surplus purchase money, that may have been paid away by order of a Civil Court, be repaid by him, with interest at the highest rate of the current Government securities, and, if such party shall neglect to pay any amount so recoverable within six months from the date of such final decree, he shall lose all benefit therefrom. (S. 34).

30. **If sale annulled, purchase-money to be refunded.**—In the event of a sale being annulled by

a final decree of a Court of Justice, and the former proprietor being restored to possession, the purchase-money shall be refunded to the purchaser by Government, together with interest at the highest rate of the current public securities. (S. 35).

31. **Suit brought to oust purchaser on ground that purchase was made for another person to be dismissed.**—Any suit brought to oust the certified purchaser as aforesaid on the ground that the purchase was made on behalf of another person, not the certified purchaser, or on behalf partly of himself and partly of another person, though, by agreement, the name of the certified purchaser was used, shall be dismissed with costs. (S. 36).

A instructs his servant B to purchase an estate at a sale for arrears of revenue with A's money and in A's name; notwithstanding such instructions, B purchases the estate in B's name but with A's money. B after getting the sale certificate takes possession of the estate. A brings a suit against B for declaration of title and recovery of possession of the estate. Is A's suit maintainable? Does it make any difference if A brings the suit against B's heirs after B's death? Give reasons. B. L. 1914(b), 1923 (a).

Note.—The object of this section is to prevent the true owner from disputing the title of his *benamdar* (certified purchaser) and not to preclude a third party from enforcing a claim* against the true owner in respect of the *benami* property (12 Cal. 302, 37 I. C. 790)* nor would this section preclude the real owner from instituting a suit for the specific performance of a contract entered into by the certified purchaser at the time of sale (14 Cal. 583). The Legislature in enacting S. 36, intended to give to a certified purchaser in possession a statutory title against the person, if any, on whose behalf he had purchased. But whether this protection extends also to his heirs and assignees is not quite clear. In 2 C. W. N. 433, Trevelyan, J. held that S. 36 applies just as much to a suit to oust the assignee of a certified purchaser as it does to a suit to oust that purchaser. The Legislature, he added, in enacting

* The object of section 36 appears to be this, that with the view of discouraging *benami* purchases at sales of this nature, the Legislature says that a suit to oust the *benamdar* shall not lie. But in the vast majority of *benami* transactions, no controversy ever does arise between the *benamdar* and the real owner. The real owner is left in possession and derives all the benefit of the estate, notwithstanding that he chooses to run all the risks incident to that method of holding property and when the real owner is thus left in enjoyment of his property, and the *benamdar* raises no dishonest claim against him, it would be a departure from the principle on which these sections are framed and would introduce, instead of checking, fraud and dishonesty, if we were to construe the section as meaning that where a creditor of the real owner has to bring the property to sale, this sham title of the *benamdar* may be set up against the creditor. That would be making this provision which was intended to discourage fraud, an instrument of fraud. (12 Cal. 302.)

A intructed A to purchase a certain property at a revenue sale on his behalf. B purchased it in his own name but with A's money and then fraudulently executed a deed of sale in favor of C who had notice of A's title. A now brings a suit against C for recovery of possession & declaration of title. Discuss if A's suit is maintainable. Give reasons for your answer. B. L. 1921 (suppl.)

A, the certified purchaser of a taluk at a Revenue Sale, entered into an agreement with B, the former proprietor, to reconvey the property to the latter after the sale and obtained symbolical possession of the same, the actual posses-

that section intended to give to a certified purchaser in possession a statutory title against the person, if any, on whose behalf he had purchased and therefore their protection would devolve upon his heirs or assignees who take a title in continuation of that of the certified purchaser. But Maclean C. J. and Ghose J. held that S. 36 is a penal section and ought to be construed strictly and literally and in construing the section the Court ought not go beyond the strict letter of the language used or to put a construction upon that language which would have the effect of materially qualifying the operation of the section. The section says :—"Any suit brought to oust the *certified purchaser* etc. shall be dismissed". The section, therefore, is no bar to the suit which is not a suit to oust the *certified purchaser* but to oust some body else although he claims through the former. The principle of law that the statutory protection given to a certified purchaser does not extend to a person claiming through or under him has been followed in many cases. (*see* 14 M. I. A. 496 ; L. R. 2 I. A. 154)

Benami purchase by a defaulter—There is nothing in this Act which makes it illegal for a former proprietor or sharer to be a purchaser of his estate at a similar sale. On the contrary, S. 53 of the Act distinctly contemplates the case of such a proprietor or co-sharer recovering possession of his estate by purchase, and this is no where limited to a purchase made after the auction purchase (11 W. R., 265). A co-sharer who defaults in paying Government revenue and purchases his estate *benami* at a subsequent revenue sale does not, therefore, commit any tort (5 C. L. J. 64). It should be observed, however, that this section and S. 53 make it dangerous for a proprietor wilfully to allow his estate to be sold for arrears of revenue with the object of avoiding the under-tenures and then repurchasing in *benami*. (Roy).

32. **Liability of purchaser.**—The party certified as the proprietor of an estate or share of an estate by purchase under this Act shall be answerable for all instalments of the revenue of Government which may fall due after the latest day of payment aforesaid. (S. 30).

33. **Rights of purchasers of permanently settled estate sold for its own arrears.**—The pur-

chaser of an *entire* estate in the *permonently settled districts* of Bengal, Behar and Orissa sold under this Act for the recovery of arrears due on account of the same shall acquire the estate free from all incumbrances which may have been imposed upon it after the time of Settlement ; and shall be entitled to avoid and annul all under-tenures, and forthwith to eject all under-tenants, with the following exceptions :—

(1) Istimrari or mukrari tenures which have been held at a fixed rent from the time of the Permanent Settlement.

(2) Tenures existing at the time of Settlement which have not been held at a fixed rent :

Provided always that the rents of such tenures shall be liable to enhancement under any law for the time being in force for the enhancement of the rent of such tenures

(3) Talukdari and other similar tenures created since the time of Settlement, and held immediately of the proprietors of estates and farms for terms of years so held, when such tenures and farms have been duly registered under the provisions of this Act.

(4) Leases of land whereon dwelling houses, manufactories or other permanent buildings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship, or burning or burying grounds have been made, or wherein mines have been sunk.

And such a purchaser as is aforesaid shall be entitled to proceed in the manner prescribed by any law for the time being in force for the enhancement of the rent of any land coming within the fourth class of exceptions above mentioned if he can prove the same to have been held at what was originally an inferior rent, and if the same shall not have been held at a fixed rent, equal to the rent of good arable land, for a term exceeding twelve years, but not otherwise.

Provided always that nothing in this section shall entitle any such purchaser as aforesaid to eject any raiyat having a right of occupancy at a fixed rate or at a

sion remaining with B. A having refused to fulfil the promise, B brought a suit to compel specific performance of the contract. It was argued that under S. 36 of Act XI of 1859 the suit was not maintainable. Is the argument sound ? B. L. 1920(*a*).

Can the purchaser at a revenue sale annul incumbrances in the following cases :—(a) when the purchaser is himself the defaulter, (b) when he is a patnidar under the estate sold and (c) when the estate sold does not lie in a permanently settled district. B. L. 1919(*a*).

State the rights of a purchaser at a sale for arrears of revenue. B. L. 1907. 1908.

rent assessable according to fixed rules under the law in force, or to enhance the rent of any such raiyat otherwise than in the manner prescribed by such laws, or otherwise than the former proprietor, irrespectively of all engagements made since the time of Settlement, may have been entitled to do (S. 37).

What are the rights of a purchaser of an entire estate in the permanently settled districts of Bengal, Behar and Orissa at a sale held for its own arrears under Act XI of 1859? B. L. 1900, 1914 (*a*), 1916 (*a*), 1913 (*a*), 1922 (*a*).

What are the tenures and leases protected by Act XI 1859 in estates sold for arrears of revenue? B.L. 1905

What tenures and interests are protected on a sale of an entire estate for its own arrears? B. L. 1906.

Enumerate the tenures and leases which a purchaser at a revenue-sale of an entire permanently settled estate is not entitled to avoid or annul. B.L. 1911(*a*).

Note.—The object of this section is to protect the public revenue. One of the conditions, under which the Zemindars at the Permanent Settlement were declared to be the actual proprietors, was that the revenue should be punctually paid, and that, in the event of any default a sale of the whole of the lands of the defaulter or of such portion of them as might be sufficient to make good the arrear, would invariably be made. A proprietor may reduce his receipts, by granting leases at low rates and so render the punctual discharge of the revenue a matter of difficulty. To prevent this, it was thought proper to provide that all encumbrances and leases should be avoided and cancelled, and the purchaser of an estate at a sale for arrear of revenue be placed in the same position as the original proprietor at the time of the Permanent Settlement. (Grimlay's Revenue Sale Law, p. 65).

Essentials.- In order to bring a case within the words of this section three things must concur :—there must be a sale, *first* of an entire estate ; *secondly*, in the permanently settled districts ; *thirdly*, for its own arrears.

The cases excluded by the language of this section are dealt with elsewhere—sales of shares of estates in Ss. 10, 11, 13, 14 and 54, sales of estate not in permanently settled districts in S. 52, sales of estates not for their own arrears in the latter part of S. 53 (32 Cal. 27 P. C.)

Avoidance of incumbrances.—For definition of the term "incumbrance" *vide* S. 161 of the Bengal Tenancy Act. The same principle applies to sales for arrears of revenue as to sales for arrears of rent, and in either case an incumbrance or an under-tenure is not *ipso facto* avoided by the sale of an estate for arrears of revenue, but is only liable to be avoided at the option of the purchaser at such a sale, (17 C. W. N. 984). The principle applies as much to actual encroachments on the taluk or estate by

neighbours as to incumbrances or under-tenures created on it by the old proprietor or which actrued on it from his laches. It applies also to rights, created by adverse possession, against the sold out proprietor. (22 Cal. 244 ; 15 C. L. J. 295).

State the extent to which the sale of an estate, for arrears of revenue due for the same, affects the rights of persons holding land within it. B. L. 1917(*a*).

[Problem.—A the proprietor of a revenue-paying estate in Bengal, is dispossessed from a portion of his estate by B who succeeds in keeping him out for 15 years continuously. Before A regains the possession, the revenue falls in arrears and the estate is sold at the revenue sale and purchased by C. Can B be lawfully ejected by C ? Give reasons for your answer. B. L. 1927(*a*)].

A is the proprietor of a revenue-paying estate. B dispossesses A and aquires a title to a part of the estate against A by adverse possession. A's estate is sold for arrears of revenue under the Revenue Sale Law and purchased by X. Is X entitled to recover from B the portion of the estate in regard to which he acquired a title by adverse possession against A ? Give reasons. B. L. 1918(*b*).

The right, which is given by S. 37 to a purchaser at a revenue sale to annul incumbrances, is not limited to the purchaser alone. It extends also to his heirs, assignees and sub-lessees (I. C. L. J. 679). But this right must be exercised by *all* the purchasers jointly where there are more purchasers than one and cannot be enforced by one of them alone (24 Cal. 335).

Protected interests.—There are certain interests which are protected, notwithstanding a sale under this Act. These are :—

(1) *Istimrari or Mukarari Tenures*—The protection given to these by cl. 1, does not depend on the fact whether an under-tenure is permanent or otherwise, but upon the fact whether it existed at the time of the Permanent Settlement of the Zemindari in question and also upon the fact whether it has been held at a fixed rent since that time.

(2) *Tenures created at the time of Settlement but not held at fixed rent*—The exemption with regard to these tenures is only as regards ejectment, but not as regards enhancement. The rent is liable to be enhanced at the instance of the purchaser of an entire estate under any law for the time being in force.

The law in force for the enhancement of rent is contained in Sec. 6 of the Bengal Tenancy Act (Act VIII of 1885).

(3) *Talukdari tenures etc. registered under the provisions of this Act.*—See Ss. 38—42 *infra.*

(4) *Lease of land whereon dwelling houses etc. have been erected* —The protection from eviction extends to lease of land on which manufactories and other permanent buildings have been erected, and to lands whereon tanks, permanent gardens, plantations,

What are the rights of a purchaser of an entire estate sold

for arrears of revenue under the Revenue Sale Law? B. L. 1924(*a*), 1923 (*b*).

canals, places of worship and burning and burial grounds have been made. Where, however, a lease of a tank was given by a Zemindar without the surrounding land, lease was held not to be protected under clause 4, as it was not, within the meaning of that clause, a lease of land whereon a tank had been excavated (2 C. W. N. 412). A dwelling house to be exempted from the operation of S. 37, Act XI of 1859, must be a dwelling-house of a permanent character and mere huts will not come under that description. A tin-shed is not a permanent building within the meaning of this section. (30 Cal. 498).

What are the rights of an auction-purchaser at a revenue sale (a) of the entire estate, (b) of a share of the estate? B. L. 1922(*b*).

[**Problem.**—A tenure holder whose tenure was created after the Permanent Settlement raises a substantial pucca building on a portion and lets out permanently the remainder of his tenure to a rent-collector. The zemindary is sold under Act XI of 1851 for non-payment of revenue and is purchased by a stranger What are the rights of the purchaser (*a*) to the lands comprised in the tenure, and (*b*) to the pucca structure raised thereon? B. L. 1927(*a*)].

(5) *Occupancy holdings*—An auction-purchaser is not entitled to eject any raiyat having a right of occupancy, or to enhance the rent of such raiyat otherwise than in the manner prescribed by the laws in force. The expression "right of occupancy" in this section is not limited to the right that could be acquired under the rules laid down in Act X of 1859. It also covers right of occupancy that might be acquired under laws promulgated since 1859.

The last clause of the section containing the proviso speaks of two classes of occupancy raiyats: (1) raiyats having rights of occupancy at fixed rate and and (2) raiyats whose rents are not fixed, but whose rents are liable to enhancement according to rules prescribed by the laws in force and not otherwise. Speaking of the enhancement of rent where that is possible *i. e.* of the second class, the right to enhance is limited according to rules prescribed by the laws in force for the time being.

34. **Rights of purchaser of estate not permanently settled, sold for its own arrears.**—The purchaser of an estate in a district not permanently settled, sold under this Act for the recovery of arrears due on account of the same, shall acquire the estate

free from all incumbrances which may have been imposed upon it after the time of settlement. and shall be entitled to avoid and annul all tenures which may have originated with the defaulter or his predecessors, being representatives or assignees of the original engagor, as well as all agreements with raiyats or the like, settled or accredited by the first engagor or his representatives subsequently to the last settlement, as well as all tenures which the first engagor may, under the conditions of his settlement, have been competent to set aside, alter, or renew, saving always and except leases of lands whereon dwelling houses, manufactories or other permanent buildings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship or burning or burying grounds have been made, or wherein mines have been sunk, which leases or engagements shall, so long as the land is duly appropriated to such purposes, and the stipulated rent paid, continue in force and effect.

Provided that nothing contained in this section shall be construed to entitle any purchaser of land at a public sale for arrears of revenue to demand a higher rate of rent from any persons whose tenure or agreement may be annulled as aforesaid, than was demandable by the former proprietor, except in cases in which such persons may have held their lands under engagements, stipulating for a lower rate of rent than would have been justly demandable for the land, or in cases in which it may be proved that according to the custom of the Pargana, mauza, or other local division, such persons are liable to be called upon for any new assessment or other demand not interdicted by the Regulations of Government. (S. 52).

35. **Purchase when subject to incumbrances. Rights of a purchaser being a sharer in the estate and of a purchaser of an estate not sold for its own arrear.**—*Excepting sharers with whom the Collector, under Ss. 10 and 11 of this Act has opened separate accounts,* any recorded or unrecorded proprietor or co-partner, who may purchase the estate of which he is proprietor or co-partner, or who, by re-purchase

What is the position of a purchaser of a share of an estate? Mention the instances of sales held under Act IX

of 1859, in which the purchaser's right is subject to incumbrances existing at the time of the sale.
B. L., 1909.

or otherwise, may recover possession of the said estate after it has been sold for arrears under this Act, and likewise any purchaser of an estate sold for arrears or demands other than those accruing upon itself, shall, by such purchase, acquire the estate subject to all its incumbrances *existing at the time of sale*, and shall not acquire any rights in respect to undertenants or raiyats which were not possessed by the previous proprietor at the time of the sale of the said estate. (S. 53).

State as fully as you can the difference between the rights of a purchaser of an entire estate sold for arrears of Govt. revenue due thereon, under Act XI of 1859 and those of a purchaser of a share of an estate sold for arrears of Govt. revenue due as per separate account opened in the Collectorate in respect of such share.
B. L. 1917(*b*).

Note.—The section is intended to meet the case of proprietors intentionally allowing estates to fall into arrears in order that they may be sold free from incumbrances. It was a general and fundamental principle of the revenue system that the public sale of the Zemindar's estate for arrears annuls all engagements derivative from him or his predecessors. This opened a door to abuse by enabling a Zemindar, who, for a present money consideration, had granted leases or other temporary or permanent assignment of his land fraudulently to annul such grants, by intentionally allowing the estate to fall into arrear, so that it might be sold free from incumbrances, where the former proprietor would buy it *benami*. The Government to prevent such fraud in the event of a public sale for arrears, retained the power of preserving such grants at their option. This rule was introduced by Regulation XI of 1822, and so far as it went, it operated in a beneficial manner. It was, however, extended by S. 30, Regulation XII of 1841, which provided that proprietors or co-sharers, recorded or unrecorded, who purchased in their own name, or in the name of some other person or after the sale by repurchase or otherwise recovered possession of the estate, as well as purchasers of estates sold for arrears or demands, other than those accruing on such estates, acquired them subject to all incumbrances existing at the time of sale and did not acquire any rights in respect to raiyats and under-tenants which were not possessed by the previous proprietor at the time of sale. From this rule, however, were excepted co-partners of estates under *butwara* (partition) who had saved their shares from sale under Ss. 32 and 34 of Reg. XIX of 1814. This provision was repeated in S. 29, Act I of 1845 and in S. 53 of the present Act, with the addition of another exception, *viz.*, sharers with whom the Collector under Ss. 10 and 11. of the

A the owner of a share of an estate, mortgaged the same to B. For the default of A in paying the revenue, the share was sold under Act XI of 1859 and was

Act have opened separate accounts. (Grimlay's Revenue Sale Law).

Notice that the expression "existing at the time of sale" does not occur in S. 54. There is, therefore, a difference between the rights acquired under Ss. 53 and 54, for which *see* notes under S. 54 *infra*.

Any co-proprietor purchasing an estate sold for arrears of Govt. revenue acquires it subject to all the incumbrances existing at the time of the sale, even if the purchaser is a non-defaulting proprietor and the incumbrances were created by the defaulting proprietor (16 W. R. 136). The law is the same whether the proprietor or co-proprietor is recorded or not. (4 Cal. 607). Such a proprietor or co-proprietor so purchasing is in the same position whether he purchases *benami* through a third party or purchases it from third party after the latter had purchased it himself. (16 W. R. 156).

[**Problem.**—An entire estate was sold for arrears of revenue. One of the co-sharers who had refused to pay his share of the revenue and for whole default the estate was sold, purchased it *benami* in the name of his servant, who obtained a certificate of title from the Collector. Discuss the effect of the sale (1) as regards the other co-sharers who dispute the right of the purchaser under the sale; and (2) as regards under-tenure-holders and incumbrances. B. L. 1917 (*b*), 1921 (suppl.)].

purchased by C. Can R recover the mortgage debt out of the property in the hand of C? B. L. 1917(a).

What are the rights of a purchaser of an entire estate in a permanently settled district sold for its own arrears? B. L. 1916(*a*) 1914 (*a*).

What are the rights of a purchaser of a share of an estate sold under the Revenue sale law? B. L. 1914(*b*).

A portion of a permanently settled estate for which a separate account is opened under the provisions of Act XI of 1859 is sold for arrear of revenue. Is the purchaser of such a share entitled to avoid incumbrances not protected under the statute? Give reason. B. L. 1921(*a*).

36. **Rights of purchasers of shares of estate.**—When a share or shares of an estate may be sold under the provisions of S. 13 or S. 14, the purchaser shall acquire the share or shares subject to all incumbrances, and shall not acquire any rights which were not possessed by the previous owner or owners. (S. 54).

Distinction between Ss. 53 and 54:—There is a clear distinction between the rights acquired under S. 53 and under S. 54 of the Act. Under the former section a purchaser acquires the estate subject to all incumbrances *existing at the time of sale*, whether created before or after the default, and even upto the date of sale; but under S. 54 all incumbrances created after the date on which a purchase under that section takes effect, that is after the date on which the default was committed, are void. A share of a taluk

admitted to separate account under Ss. 10 and 11 of Act XI of 1859, was advertised for sale under that Act in default of payment of the June kist of Government revenue. On the 25th of July the recorded sharer mortgaged his interest in that share to the plaintiff. The sale took place on the 26th September, and the share was purchased by the defendant who obtained a sale certificate in due form under the Act declaring in accordance with S. 28 that his title accrued from the 29th June, the day after the latest date allowed for payment of the June kist. *Held* that the mortgage was of no effect as an incumbrance under S. 54 of the Act. (17 Cal. 148).

Under what circumstaces does a purchaser at at a Revenue sale acquire the estate subject to all incumbrances? X purchased a property on 17ht Feb. 1896, at the execution sale and obtained the certificate of sale on the 21st March, 1896. On account of arrears of revenue for the Jan. kist, 1896, the property is sold again at a revenue sale and purchased by X on 25th March, 1896. Will X get the property free from incumbran es? Discuss. B. L. 1919(*b*). *M, a co-proprietor of a revenue paying estate, purchased the whole estate at a sale for arrears of revenue. L, a holder of a tenure created in 1860 was dispossessed*

To sum up.—(1) The purchaser of an *entire* estate, in the *permanently settled district*, *sold*, under the Revenue Sales Act, *for its own arrears*—acquires the estate free from all incumbrances imposed upon it since the Permanent Settlement and is entitled to avoid and annul all under-leases excepting—

(i) *Istimrari* or *mukarari* tenures *held at a fixed rent since the Permanent Settlement.*

(ii) Tenures *existing at the time of the Permanent Settlement*, not held at a fixed rent. (The rate of rent is however, subject to enhancement under any law in force).

(iii) Talukdari and other similar tenures created since the time of the Permanent Settlement and held immediately of the proprietor, when such tenures have been duly registered under Act XI of 1859.*

(iv) Leases of land where dwelling houses, manufactories or other permanent buildings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship or burning or burying grounds have been made or whereon mines have been sunk. (But the rents of such leases shall be liable to enhancement under any law for the time being in force if the purchaser can prove that the lease was originally held at an unfair rent and not held at a fixed rent, equal to the rent of good arable land, for a term exceeding 12 years but not otherwise.)

(2) The purchaser of an entire estate in a *district not permanently settled*, *sold for its own arrears*—acquires the estate free from

* Vide Ss. 34-50, *infra*.

all incumbrances imposed upon it after the time of settlement, and are entitled to avoid and annul *(a)* all tenures originating with the defaulter or his predecessors, as well as *(b)* all agreements with raiyats or the like, settled subsequent to the last agreement as well as *(c)* all tenures which the first engagor may, under the conditions of his settlement, have been competent to set aside, alter or renew except—leases of land whereon dwelling houses, manufactories or other permanent buildings have been erected, or whereon gardens, plantations, tanks, canals, wells, places of worship or burning or burying grounds have been made or wherein mines have been sunk. (These leases and engagements shall, so long as the land is duly appropriated for such purposes and the stipulated rent paid, continue in force and effect).

by M after the sale. L sued to recover possession. Can he succeed? Give reasons. B. L. 1923(*b*).

Can the purchaser at a Revenue sale annul incumbrances when —(a) purchaser is himself the defaulter, (b) when he is a patnidar under the estate sold? B. L. 1926(a).

(The purchaser however is not entitled to demand higher rents from persons whose tenures or agreements are thus annulled, unless the lands have been held at lower rate of rent than were justly demandable; or unless it was shown that according to the custom of the *pargana*, *mauza* or other local division such persons were liable to be called upon for any new assessment.)

(3) The purchaser of a *share or shares of an estate* acquires the same subject to all the incumbrances and shall not acquire any rights which were not possessed by the previous owner or owners.

(4) The purchaser of an estate *not sold for its arrears* acquires the same subject to all its incumbrances existing at the time of sale and does not acquire any rights in respect to under-tenants or raiyats which were not possessed by the previous proprietor at the time of the sale of the said estate.

(5) Any recorded or unrecorded proprietor or co-partner (excepting sharers with whom separate accounts have been opened by the Collector, under Ss. 10 and 11) who may purchase at a revenue sale the estate of which he is proprietor or co-partner acquires the estate, subject to all the incumbrances existing at the time of sale.

(6) Any recorded or unrecorded proprietor or co-partner who may by repurchase or otherwise, recover possession of the estate of which he is proprietor or co-partner after it has been sold for arrears under this Act, acquires the estate subject to all the incumbrances existing at the time of the sale.

37. **Recovery of arrear due to defaulter** — Arrears of rent which, on the latest day of payment, may be due to the defaulter from his under tenants or raiyats shall, in the event of a sale, be recoverable by him after the said latest day, by any process except distraint which might have been used by him for that purpose on or before the latest day. (S. 55).

38. **Punishment for contempt** —Any Collector or other officer as aforesaid conducting a sale under this Act shall be competent to punish any contempt committed in his presence in open kachari or office for the time being, by fine to an extent not exceeding two hundred rupees, commutable, if not paid, to imprisonment in the jail for a period not exceeding one month; and the Magistrate to whom such an offender may be sent by a Collector or other officer as aforesaid shall carry his sentence into effect.

Provided that an appeal from any order passed under this section shall lie to the Revenue Commissioner, whose decision shall be final. (S. 56).

39. **Default as to deposits a contempt.**—A default to make good a bid by making the deposit required by S 22 of this Act, shall be held to be a contempt. (S. 57).

Under what circumstances can the Collector purchase the property on account of the Govt. at a Revenue Sale? At Revenue Sale the Collector entered the ring as an ordinary bidder. He was defeated and the highest bid determined against him.

40. **Government may purchase at sale.**—When an estate is put up for sale under this Act for the recovery of arrears of revenue due thereon, if there be no bid, the Collector or other officer as aforesaid may purchase the estate on account of the Government *for one rupee*, or, if the highest bid be i sufficent to cover the said arrears and those subsequently accruing up to date of sale, the Collector or other officer as aforesaid may take or purchase the estate on account of the Government at the highest amount bid; in both of which cases the Government shall acquire the property subject to the provisions of this Act. (S. 58)

Note.—This section provides for purchase by the Government at a revenue sale in two classes of cases. It first provides that, if there be no bid when an estate is put up for sale under the Act, the Collector may purchase the property on account of the Government

for one rupee ; this clearly implies that the Collector is himself not to bid in the first instance, that is, he is to ascertain whether there are bidders for the property, and it is only when no one offers any bid that the Collector may purchase the estate for one rupee. The section then goes on to provide in the second place that when there are bidders but the highest bid is insufficient to cover the amount realisable the Collector may take or purchase the estate on account of the Government at the highest amount bid. The highest bid here referred to is not arrived at by competition between the Collector and the ordinary bidders ; as in the first class of cases the Collector is to take no action till he has ascertained that there are no bidders, so also in the second class of cases the Collector is to take no action till he has ascertained that the highest amount offered by the bidders present is insufficient to cover the amount realisable. (31 Cal. 1036).

But the highest bed was the sufficient to cover the demand realizable. Can the Collector purchase the property on account of the Govt. at the highest amount bid ? B. L. 1925(*b*).

41. The Collector on the part of the Government shall be entitled to demand from applicants under Ss. 10 and 11, Ss. 15 and 10, Ss. 40, 43 and 44 of the Act the prescribed fees and applications under the said sections shall not be received unless the said fees are tendered therewith. (S. 59).

42. **Registration of taluks and other tenures** —The following rules for the registration of talukdari and other similar tenures created since the time of Settlement, and held immediately of the proprietor of estates, and of farms for terms of years so held shall be observed. (S. 38) :—

(1) **Common and special registry.**—There shall be two sets of registers—one for common registry and one for special registry. *Common registry* shall secure such tenures and farms against any auction-purchaser at a sale for arrears of revenue except the Government. *Special registry* shall secure such tenures and farms against any auction purchaser at the sale for arrears of revenue including the Government. (S. 39).

What do you understand by Common Registry and Special Registry ? ? What are the respective advantages or disadvantages of each ? B. L. 1919(*a*), 1918 (*b*).

Advantage of Registration.—The protection of the first two classes in S. 37 does not depend upon registration : but registration has this advantage that a registered tenure is protected at once ; whereas, in the event of a sale, an unregistered tenure may be

What is the distinction

between Common registry and Special registry of tenure? What are the benefits derived from such registry? B. L. 1914(*b*).

challenged by the auction purchaser and the tenant may have to prove his title at considerable expense and some risk. In the case of the third class, the law makes protection depend on registration. The fourth class seems to be in the same category as the first two. It should, however, be noticed that S. 39 does not provide for all that can be reasonably demanded for the protection of under-tenants. This is due to the fact that only tenures held direct from the proprietors can be registered and not tenures of the second and lower degrees. (Field).

What do you understand by "Common registry" and "Special registry" and what are the special advantages when tenures are so registered under the Revenue Sale Law? B. L. 1918(*b*), 1914 (*b*), 1916 (*a*).

Effect of Common and Special Registry.—In addition to the difference in the two kinds of registration pointed out in S. 39, it should be noted that the fact that a tenure is registered in the common registry is not of itself *prima facie* evidence that such a tenure exists, whereas special registration may raise the presumption. (9 Cal. 116). In this case, Tottenham, J. observed: "If the tenure had been specially registered, then, under S. 50 of the Act, entry in the Special Register would apparently have been *prima facie* good evidence of the existence of the tenure, but no such provision is made in the Act with regard to registration in the Common Register.....We see no reason to hold that the registration of a tenure in the Common Register under the Act relieves the person alleging such tenure of the necessity of proving its existence in the regular way. S. 37 of the Act provides that certain tenures, if registered, are protected from being set aside by auction-purchasers. The effect of this is, that a bonafide tenure actually proved is not protected unless it is registered. It does not provide that the registration of an alleged tenure will have the effect of proving it".

(2) **Application for registry.**—The holder of any talukdari or ther similar tenure, such as is described in S. 38 of this Act, desirous of registering it, shall apply be petition to the Collector of the district to which the estate belongs. (S. 39).

(3) **Contents of the application** —The application shall state which description of registry is desired, and shall contain the following particulars, so far as the same are ascertainable :—(*i*) The pargana or parganas in which the tenure is situated ; (*ii*) the nature of the tenure ; (*iii*) the name or names of the village or villages.

whereof the land is composed, or wherein it is situated ; (*iv*) the area of the land comprised in the tenure, with its boundaries in complete detail ; (*v*) the amount of rent payable annually for the tenure, and whether the rent is fixed for a term of years or in perpetuity, and the duties, if any, required to be performed on account of it ; (*vi*) the date of the deed constituting the tenure or the date when the tenure was created ; (*vii*) the name of the proprietor who created the tenure ; (*viii*) the name of the original holder of the tenure ; (*ix*) the name of the present possessor, and, if he be not the original holder the mode in which he succeeded to the tenure—whether by inheritance, gift, purchase, or otherwise, and whether he holds jointly or solely.

Holders of such farms as are described in section 38 may apply in like manner for registry of the same. The application shall contain such of the foregoing particulars as are applicable to farms. (S. 40).

Registration of a fractional interest.—The registration of a fractional share in a taluk or other dependent tenure, or the registration of a tenure which consists of an undivided fractional share of an estate, is inadmissible under Ss. 38 and 40 of the Act.

(4) **Procedure on application for common registry.**—When the application is for common registry the Collector shall serve a notice on the recorded proprietor or proprietors of the estate in which the tenure or farm is situated, or the authorized agent of such proprietor or proprietors, with a copy of the application annexed ; and shall cause a notice with a copy of the application annexed, to be affixed, in his office, and at the malkachari of the estate in which the tenure or farm is situated, or in such other place or places as, in the opinion of the Collector, may be best suited to give publicity to the application, requiring the proprietor or any party interested, within thirty days from the issue of the said notice, to file any objections he may have to the registry of the tenure or farm, or to any statement contained in the application. If within the limited time no objection is made, the Collector shall register the tenure or farm. If, within the limited time, an objection is made by any recorded proprietor, or by any party

interested not being a proprietor, the Collector shall examine the person so objecting or his authorised agent, and, if it shall appear to him that such person has probable ground of objection, the Collector shall suspend proceedings, and shall refer the parties to the Civil Court ; otherwise he shall grant the application.

If the decision of the Civil Court be in favor of the applicant, the Collector, on the presentation of a copy of the final decree, shall register the tenure or farm (S. 41).

(5) **Procedure on application for special registry.**—When the application is for special registry, the Collector shall serve and issue the notice prescribed in the last preceding section.

If within the limited time, no objection is made the Collector shall cause any enquiry that he may deem necessary for the security of the Government revenue to be made : and, if he is satisfied that the Government revenue of the parent estate is sufficiently secured so far as it may be affected by the tenure or farm in question, he shall report the case to the Commissioner, who, if also satisfied on that point, shall direct the tenure or farm to be registered according to the application ; otherwise the application shall be rejected.

If, within the limited time, any recorded proprietor, or any party interested not being a proprietor, object to the registry, the Collector shall examine the person so objecting or his authorized agent, and if it shall appear to him that such person has probable ground of objection, shall suspend proceedings ; and shall refer the parties to the Civil Court ; otherwise he shall proceed as if no objection has been made.

If the decision of the Civil Court be in favour of the applicant, the Collector, on the presentation of a copy of the final decree, shall proceed as above provided for cases in which no objection is made within the limited time. (S 42).

Difference between S. 41 and S. 42.—In cases of common registration (S. 41), where there is no objection or where the objection appears from the examination of the objector to be unfounded, the Collector can order registration ; but, in cases of special regis-

tration (S. 42) the Collector must satisfy himself as to the security of the revenue and report to the Commissioner, who alone can sanction the registration.

(6) **Registration of leases of certain lands.**—Leases of lands of the description specified in the fourth exceptional class in S. 37, may be registered, at the option of the holders, in the manner and under the rules hereinbefore provided for the registry of talukdari and other similar tenures. (S. 43).

(7) **Registration of old tenures.**—Tenures of the first and second exceptional classes in S. 37 may be registered at the option of the holders; and, when so registered, shall be entered only in the special register.

Application for such registry shall contain the particulars specified in S. 40 so far as the same are ascertainable, and notices shall be served and issued in the manner prescribed in S. 41.

If, within the limited time, no objection is made by any recorded proprietor or by any party interested not being a proprietor, the Collector shall make such enquiries as may be necessary to satisfy him as to the validity of the tenure and if the result be to satisfy him that the tenure is valid, he shall report the case to the Commissioner, who, if also satisfied that the tenure is valid, shall direct it to be entered in the special register; otherwise the application for registry shall be rejected.

If, within the limited time, any recorded proprietor or other party as aforesaid object to the registry of the tenure, the Collector shall examine the person so objecting or his authorized agent, and if it shall appear to him that such person has probable ground of objection, shall suspend proceedings, and refer the parties to the Civil Court, otherwise he shall proceed as if no objection had been made.

If the decision of the Civil Court be in favour of applicant, the Collector, on the presentation of a copy of the final decree, shall proceed as above provided for cases in which no objection is made within limited time:

Provided always that nothing contained in this sec-

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tion shall be understood as rendering registration necessary for the protection of *bonafide* tenures of the description herein referred to. (S. 44)

(8) **Expenses of measurement, survey, or local enquiry.**—The actual expenses of any measurement, survey or local enquiry made under Ss 42 and 44 of this Act shall be borne by the party who applies for the registry of his tenure or farm; and such party may be required by the Collector from time to time to make such advances on this account as he may consider necessary (S. 46).

(9) **Civil Court incompetent to order entry in the Special Register.**—No Civil Court shall be competent to order the Revenue authorities to enter any tenure or farm in the special register: Provided always that the refusal of the revenue authorities so to register any tenure or farm shall not affect the title of the holder, whatever it may be. (S. 47).

(10) **Suit for cancelment of registry of tenure or farm.**—Subject to the general law of limitation, any person thinking himself wronged by the registry of a tenure or farm may file a suit for the cancelment of the same. (S. 48).

(11) **Proceedings of Revenue authorities in registration of tenures etc.**—In the execution of their functions in the registration of tenures and farms under the Act, all subordinate Revenue authorities shall proceed, in accordance with the general instructions which they may receive from the superior Revenue authorities to whom they are subordinate: and from the local Government; and all orders passed under the sections aforesaid shall be open to to appeal in usual courts.

The order of a Commissioner for the special registry of a tenure under the provisions of this Act shall be open, at any time within one year, from the date of registry, to revision by the Board of Revenue and the Local Government on the ground of the Government revenue not having been sufficiently secured, or of the invalidity of the tenure, as the case may be. (S. 49).

(12) **Effect of entry in special registry.**— Entry in the special register shall be an effectual protection of the tenure or farm so registered, unless in a suit instituted by Government in a Civil Court within the period allowed for suits for the recovery of the public revenue, a decree be passed pronouncing the registration to have been obtained by fraud to the injury of the Government revenue: Provided that a tenure or farm in the hands of a *bonafide* purchaser for value shall not be avoided by reason of such fraud. But the tenure or farm shall be liable to such amount of rent as would have been fair and equitable at the time of the special registry thereof; such amount to be fixed by the Collector (S. 50).

Distinguish between "Common Registry" and "Special Registry." B. L. 1922(*b*).

(13) **Protection of talukdari tenures pending enquiry in case of sale of parent estate for arrear of revenue.**—Tenures and farms of the third exceptional class described in S. 37 of this Act, for the special registration of which application shall be made within the prescribed time, and in respect of which the Collector shall have commenced the enquiry prescribed in S. 42, shall, in case of the sale of the parent estate for arrears of revenue, be protected pending the duration of such enquiry, and shall be protected eventually by registration, if the final award of the Revenue authorities upon such application be in favor of the claimant. (S. 51).

(14) **Time for registration under Ss. 40, 43 and 44.**—(*a*) Applications under Ss. 40, 43 and 44 of this Act for registry of tenures and farms created before the passing of the Act must be made within 3 years of the passing of the Act. (*b*) Application for the registry of tenures existing at the time of the passing of the Act but created after the passing of the Act, must be made within three months of the passing of the Act. (*c*) Applications for the registry of tenures created after the passing of the Act must be made within three months of the date of the deed constituting the tenure (S. 45).

APPENDIX—Additional Questions.

1. What is the difference between a *Lumberdar* and *Pattidar*? B. L 1913 (a).

The *puttedars* are occupant sharers of a revenue paying estate, each managing his share separately, but paying his revenue through one of the sharers called a *lumberdar*: the whole of the estate is liable for the revenue but in case of default, the defaulter's share is first proceeded against. Upon a sale for arrears, the sharers became occupancy tenants at fixed rents which was possibly their original condition. This mode of holding is found chiefly in the North west Provinces. (Phillips, 342). *Lumberdar* is derived from *Lumber*=number, and *dar*=a holder and means a holder of a number in the Collector's Roll. *Pattidar* is derived from *Patti*=a share and *dar*=a holder and means any holder of a share. At the commencement of the British rule, the proprietors in Upper India were generally so numerous that a settlement with all of them was considered as highly inconvenient. The British Government therefore selected one amongst the sharers and made settlement with him. The proprietor who is thus a party in his own name to the contract with the Government for the payment of the revenue and whose name is entered in the public accounts as the person resposible for the collection and payment of the revenue is called the *Lumberdar* (or *Sadar malguzar*) while the other co-sharers or proprietors who are not parties (to the settlement) in their own names are called *Pattidars*. *See* Field's Bengal Regulations.

2. What is a *Bhaiyachara* tenure? B. L 1913 (a).

Bhaiyachara (derived from *bhai*=brother and *achara*=institution, or from *bhiya* and *char*=four, indicating according to native idiom, that all *pay alike*) tenure is found chiefly in Bundelkund. The village is divided into *thokes* and each *thoke* is sub-divided into *behris*. The *asami* or cultivator pays the *thokedar*, who again pay the *lumberdar* or *mokhia*. When any *asami* fails to pay his quota the *behriwar* has to make good the deficiency by a fresh assessment on all the *asamis* made upon the principle of the first assessment. In the event of the failure of a whole *behri* the deficiency is made good in a similar manner from the *thoke*. *(Ibid)*.